



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

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

In Re: 22573677

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 Sacramento, California 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 sustain 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

On 2016, the Obligor signed an ICE Form I-352, Immigration Bond, agreeing to deliver the bonded noncitizen upon each and every written request. On April 15, 2021, ICE sent an ICE Form

I-340, Notice to Obligor to Deliver Alien, to the Obligor's address of record via certified mail, requesting that the noncitizen be delivered to the Sacramento, California ICE Field Office on [REDACTED] 2021, for an interview. On [REDACTED] 2021, ICE declared the bond breached, finding that the noncitizen was never delivered to the field office. On appeal, the Obligor provides a letter stating that he never received notice to deliver the noncitizen and requests reinstatement of the bond.

The regulation at 8 C.F.R. § 103.8(c) states that states that ICE must provide the Obligor with notice to deliver via personal service. The regulation at 8 C.F.R. § 103.8(a)(2) states that personal service may consist of any of the following:

- Delivery of a copy personally;
- Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;
- Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address; or
- If so requested by a party, advising the party by electronic mail and posting the decision to the party's USCIS account.

In this instance, the record indicates that ICE sent the Form I-340 to the Obligor's address of record via certified mail, return receipt requested. However, the record does not establish that the Obligor received this notice.

According to the letter provided on appeal, the Obligor visited the ICE field office after receiving notice of the breach. The ICE officer he spoke to said that they did not have a copy of PS Form 3811, Domestic Return Receipt,¹ showing that the Form I-340 had been delivered. The record supports this claim, as it does not include a return receipt for the Form I-340 sent on April 15 2021.

The record does include a printout from the United States Postal Service's tracking website, which indicates that the Form I-340 was delivered to an individual in the Obligor's zip code on May 3, 2021. However, unlike a return receipt, the tracking website printout does not state the specific address where the delivery was received or include the signature of the recipient. Because the Obligor has stated that he did not receive the Form I-340 and the return receipt is not in the record, the tracking printout is insufficient in this case to establish that the Obligor received notice to deliver the bonded noncitizen.

By failing to deliver the bonded noncitizen, the Obligor violated the bond's central term. The record also indicates that the noncitizen still has not been delivered to the field office over a year later, making the violation extensive. Upon learning about the breach, the Obligor did visit the ICE field office to inform them that he never received the notice to deliver, but there is no indication that he made any attempt to deliver the bonded noncitizen in order to comply with the bond's terms. However, because the Obligor did not receive notice to deliver the bonded noncitizen, we find that his violation of the

¹ A return receipt's proof of delivery includes the date of delivery, the signature of the recipient, and information about the recipient's actual delivery address, if different than the one provided. U.S. Postal Serv., Return Receipt – The Basics, <https://faq.usps.com/s/article/Return-Receipt-The-Basics> (last visited Sept. 19, 2022).

bond's terms was accidental and made in good faith. Taking into account the totality of the circumstances and the factors named in *Matter of Kubacki*, 18 I&N Dec. at 44, we find that the violation is not substantial and the bond has not been breached.

ORDER: The appeal is sustained.