



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

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

In Re: 22573501

Date: FEB. 07, 2023

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 New York, New York 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.

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).

On June 7, 2016, the Obligor signed an ICE Form I-352, Immigration Bond, agreeing to deliver the bonded noncitizen upon each and every written request. On March 27, 2021, ICE sent an ICE Form I-340, Notice to Obligor to Deliver Alien, to the Obligor via certified mail, requesting that the noncitizen be delivered to the New, York, New York ICE Field Office for an interview. This letter was returned as undeliverable. On May 26, 2021, ICE sent another Form I-340 to the Obligor via

regular mail, requesting that the noncitizen be delivered to the field office on May 26, 2021.¹ On May 27, 2021, ICE declared the bond breached, finding that the noncitizen was never delivered to the field office. On appeal, the Obligor states that they did not breach the bond because the violation of the bond's terms was accidental and made in good faith and they subsequently took steps to comply with the bond's terms.

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 appointment, which was a violation of bond's terms. Therefore, the sole issue on appeal is whether this violation was substantial.

According to Obligor's counsel, a member of their law firm made a clerical error and calendared the bonded noncitizen's delivery appointment incorrectly. Counsel further states that they delivered the noncitizen to ICE on June 2, 2021, and June 3, 2021, only a few days after the delivery date. To support this claim, the Obligor provides contemporaneous email and text message documentation showing that the bonded noncitizen was delivered to the ICE field office on those dates. Finally, the Obligor provides their own affidavit stating the same facts as counsel's letter.

The *Kubacki* decision does not provide a bright-line rule regarding how many days constitute a substantial violation of the bond's terms. However, in that case, the Service concluded that a 21-day overstay was not a substantial violation. *Matter of Kubacki*, 18 I&N Dec. at 44-45. In this instance, the extent of the violation was six days. The record also indicates that the violation of the bond's terms was accidental and made in good faith, and that the Obligor took steps to comply with the terms of the bond by delivering the noncitizen less than a week later. We therefore find that the violation of the bond's terms was not substantial, and the delivery bond should be reinstated.

ORDER: The appeal is sustained.

¹ It is noted that ICE sent both of the Forms I-340 to an address in [] New York. The Obligor gave his mailing address as [] New York on the Form I-352 as well as the ICE Form I-305, Receipt of Immigration Officer – United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond. The record therefore indicates that ICE did not properly serve the delivery notices to the Obligor. See 8 C.F.R. §§ 103.8(c), (a)(2) (stating that service of a delivery demand by certified mail should be sent to the obligor's last known address). However, because the Obligor is not claiming that he did not receive notice to deliver the bonded noncitizen, the issue is not dispositive in this case.