



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

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

In Re: 25033990

Date: MAR. 30, 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 foreign national'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 Dallas, Texas, ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the Bonded Noncitizen upon written request. The matter is 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 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).

On May 23, 2017, the Obligor executed a delivery bond with ICE. In relevant part, the Obligor's duties under the delivery bond require it to "cause the [Bonded Noncitizen] to be produced . . . to an immigration officer or an immigration judge . . . upon each and every written request until exclusion/deportation/removal proceedings in his/her case are finally terminated." The record also contains an addendum, signed by the Obligor's signatory on May 23, 2017, advising the Obligor in relevant part that the "bond will remain in effect (that is, it will NOT be cancelled) until the [Bonded Noncitizen] on whose behalf it was posted, (a) leaves the United States voluntarily," indicating that the Bonded Noncitizen's voluntary departure from the United States would cancel the bond.

On [] 2022, an Immigration Judge (IJ) granted the Bonded Noncitizen's request for voluntary departure, ordering the Bonded Noncitizen to depart the United States not later than May 24, 2022. On [] 2022, ICE sent the Obligor an ICE Form I-340, Notice to Obligor to Deliver Alien, by U.S. Postal Service Certified Mail, return receipt requested. The Form I-340 requested the Obligor to deliver the Bonded Noncitizen to the Dallas, Texas, ICE ERO Field Office on August 25, 2022, for "removal." ICE later sent the Obligor an ICE Form I-323, Notice – Immigration Bond Breached, declaring the bond breached because the Obligor did not deliver the Bonded Noncitizen as requested on August 25.

On appeal, the Obligor concedes that it received the Form I-340; however, the Obligor asserts that the Bonded Noncitizen departed the United States on May 24, 2022, in compliance with the IJ's voluntary departure order. The Obligor submits on appeal, among other things, a document in a language other than English and a certified English translation of it, titled "Proof of Residence." The Proof of Residence document, issued by the Secretary of City Hall of [] establishes that the Bonded Noncitizen was physically present in the city of [] State of [] Mexico, on May 24, 2022. The Proof of Residence further provides a physical address for the Bonded Noncitizen in Mexico. The Obligor also discusses on appeal ICE's withholding of ICE Form I-210, Notice of Action—Voluntary Departure, and the Bonded Noncitizen's need to make multiple trips to the U.S. Embassy in Mexico City, ultimately to be instructed to file the Form I-210 with attachments electronically to a specified email address, which the Bonded Noncitizen and Obligor promptly did in September 2022.

The Bonded Noncitizen's timely voluntary departure canceled the delivery bond and released the Obligor from its obligations thereunder, according to the plain language of the addendum the Obligor's signatory signed, quoted above. Even to the extent that the Bonded Noncitizen's voluntary departure on May 24, 2022, did not cancel the delivery bond automatically on that date, the Obligor establishes on appeal that it did not substantially violate the terms of the bond. The Obligor presented evidence of the Bonded Noncitizen's presence outside the United States in September 2022, shortly after ICE declared the bond breached; therefore, the supposed violation would be minimal. *See Kubacki*, 18 I&N Dec. at 44. Moreover, because the record establishes that the Bonded Noncitizen actually departed the United States not later than the date on which the IJ ordered him to depart voluntarily, the Bonded Noncitizen and Obligor acted in good faith and took steps to comply with the terms of the bond. *See id.* The totality of the circumstances does not support the conclusion that either the Bonded Noncitizen or the Obligor intentionally did not comply with the terms of the bond, to the extent that there is any noncompliance. *See id.*

In summation, the record does not support the conclusion that the Obligor substantially violated the terms of the delivery bond.

ORDER: The appeal is sustained.