



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

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

In Re: 24207430

Date: JAN. 18, 2023

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Obligor seeks to reinstate a voluntary departure 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 the bond's conditions.

The Chicago, Illinois ICE Field Office declared the bond breached, concluding that the Obligor substantially violated the terms of the ICE Form I-352, Immigration Bond (the Immigration Bond), by failing to depart the United States. 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.

A voluntary departure bond is a contract between the U.S. Government and an obligor. In exchange for a grant of voluntary departure, an obligor posts a bond as security for the bonded noncitizen's departure from the United States, or the bonded noncitizen's return to ICE custody, on or before the date specified in an order granting voluntary departure. *See* 8 C.F.R. § 103.6(c)(2); *see also* 8 C.F.R. § 1240.26.

An obligor must provide to ICE probative documentation of the bonded noncitizen's voluntary departure within 30 days after the date specified in the order granting voluntary departure in order to establish substantial performance of a bond's conditions and to release the obligor from liability. 8 C.F.R. § 103.6(c)(3). Conversely, a breach occurs upon substantial violation of a bond's conditions. 8 C.F.R. § 103.6(e).

To determine if a substantial violation of a bond's terms has occurred, we review the totality of the circumstances involved and consider the extent of the violation; whether the bonded noncitizen's failure to comply was intentional or accidental; whether the noncompliance was in good faith; and whether the bonded noncitizen took steps to comply or make amends 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 November 26, 2018, the Obligor<sup>1</sup> signed the Immigration Bond, agreeing that the bonded noncitizen would voluntarily depart the United States by December 1, 2018 in accordance with the terms of the Immigration Judge's order granting him voluntary departure. The bonded noncitizen filed an appeal of the Immigration Judge's decision, which the Board of Immigration Appeals (the Board) dismissed on February 9, 2021. The Board's order granted him 60 days within which he had to voluntarily depart the United States.

On [ ] 2022, ICE issued a bond breach notice to the Obligor for his failure to depart the United States within 60 days of the Board's order. The bonded noncitizen continues to reside in the United States and the Obligor seeks reinstatement of his bond.

On appeal, the Obligor asserts that the COVID-19 pandemic limited his access to the ICE-ERO office located on 101 W Ida B. Wells Drive and that he could not make an appointment or walk-in because public health protocols limited access to government buildings. He states that without access to this facility he was unable to obtain the ICE Forms I-210 or I-392, to establish his compliance with the voluntary departure order. In addition, he argues that official travel advisories warned individuals not to travel to Mexico because COVID-19 infection rates were high. He asserts that he did not willfully remain in the United States past his voluntary departure date, but that due to extraordinary circumstances beyond his control, he could not comply with the order.

To support this claim, the Obligor includes a copy of President Biden's February 18, 2022 notice extending the COVID-19 pandemic national emergency (which began on March 13, 2020) to March 13, 2022. He also includes a copy of the January 31, 2022 "Mexico Travel Advisory," stating that Mexico is at "Level 4" because of COVID-19 infection rates. In addition, the Obligor provides a statement from Counsel explaining the reasons for the bonded noncitizen's noncompliance.

As stated above, to comply with the terms of an Immigration Bond, an obligor must ensure that the bonded noncitizen provides probative documentation of his departure within 30 days after the date specified for departure. Probative documentation of departure may include a completed ICE Form I-210, Voluntary Departure and Verification of Departure, a completed ICE Form I-392, Notification of Departure of Alien Bonded, or other authenticated information from an official such as a U.S. Customs and Border Patrol officer or a consular officer. According to the Obligor, he could not access the forms needed to prove his compliance with the terms of the voluntary departure order because ICE-ERO offices had limited public access. However, we note that it is not necessary to obtain these forms through the ICE-ERO offices. ICE maintains an online depository of forms and the Form I-392 can be found there. See <https://www.ice.gov/forms>.

More importantly, the Obligor's statement does not provide any details of the bonded noncitizen's efforts to call the ICE-ERO office or make an appointment. Furthermore, while we have considered Counsel's statement on appeal, assertions of counsel are not evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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<sup>1</sup> In this instance, the bonded noncitizen posted the voluntary departure bond, providing himself as the Obligor. We refer to the bonded noncitizen in this decision either as such or as the Obligor, depending on the capacity in which he is serving.

Therefore, the statement on appeal is not probative of the Obligor's arguments for why the bonded noncitizen did not comply with the voluntary departure order.

With respect to the bonded noncitizen's failure to voluntarily depart due to concerns regarding Mexico's high COVID-19 infection rates and travel advisories, the evidence does not establish any particular risk of individualized harm to him from exposure to COVID-19. For instance, the evidence does not establish that the bonded noncitizen received professional medical advice to remain in the United States, or that travel to Mexico would increase his risk of harm. Therefore, without further evidence to understand if the bonded noncitizen had medical or any associated individualized risk of harm returning to Mexico during the COVID-19 pandemic, the evidence is insufficient to establish that his noncompliance with the voluntary departure order was in good faith, inadvertent or caused by circumstances beyond his control.

Lastly, while we acknowledge the COVID-19 pandemic greatly impacted travel around the globe, it appears Mexico never closed its borders or curtailed entry of individuals from other countries during this period of time. *See e.g.* <https://www.washingtonpost.com/world/2022/01/12/mexico-coronavirus-pandemic-open-border/>. As such, the bonded noncitizen's contention that travel advisories impacted his ability to comply with the voluntary departure order is not sufficient to establish that his noncompliance with the voluntary departure order was in good faith, inadvertent, or beyond his control.

As noted above, the Board gave the bonded noncitizen 60 days from the date of its February 9, 2021 order to voluntarily depart the United States, which was until approximately April 6, 2021. Nearly two years later, the bonded noncitizen still has not departed the United States. As such, his violation of the central term of his voluntary departure bond is extensive, and the evidence is insufficient to establish that he took steps to comply or that the COVID-19 pandemic prevented him from complying. Instead, it appears the bonded noncitizen's violation of the terms of his bond has been intentional, and that he has not taken steps to comply with the bond's terms. We therefore find that the Obligor has substantially violated the terms of his Immigration Bond, and the Immigration Bond is breached.

**ORDER:** The appeal is dismissed.