



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

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

In Re: 20324071

Date: MAY 12, 2023

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Obligor<sup>1</sup> 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 these conditions.

The Phoenix, Arizona ICE Field Office declared the bond breached, concluding that the bonded noncitizen did not depart the country by the deadline specified on his voluntary departure order.

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 voluntary departure bond is a contract between an obligor and the U.S. Government. In exchange for a noncitizen's temporary release from ICE custody, an obligor posts a voluntary departure bond as security for the noncitizen's departure from the United States, or the 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 a noncitizen's voluntary departure within 30 days after the date specified in an order granting voluntary departure. 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).

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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 as the Obligor for readability.

The record indicates that on November 2, 2018, an Immigration Judge denied the Obligor's application for cancellation of removal and granted him 60 days from the date of the decision to voluntarily depart the United States. On November 5, 2018, the Obligor signed a Form I-352, Immigration Bond, agreeing to depart the United States by the date specified on his voluntary departure order. Before the deadline, the Obligor filed an appeal to the Board of Immigration Appeals (the Board), which stayed the execution of the decision. 8 C.F.R. § 1003.6(a). On December 22, 2020, the Board dismissed the Obligor's appeal and granted him 60 days from the date of the decision to voluntarily depart. The Obligor did not depart the United States within the time period granted to him, and on August 17, 2021, ICE found that he had breached his bond.

On appeal, the Obligor states that he did not receive notice of the Board's decision or his voluntary departure deadline and so was not able to comply. He contends that since his violation of the bond's terms was accidental and made in good faith, it was not a breach. The record indicates that on December 22, 2022, in response to the Obligor's motion to reopen his case, the Board found that neither the Obligor nor his attorney had received a copy of the December 2020 decision. They therefore vacated the prior decision and reissued it, and the Obligor was given 60 days from the new decision date to voluntarily depart the United States.

Upon a review of the *Kubacki* factors, we conclude that the bond violation was accidental and made in good faith, and that the Obligor took steps to comply with the bond's terms. The record supports the Obligor's claim that he did not receive notice of the Board's first decision in his case and so was not aware of his voluntary departure deadline. Furthermore, the Board has vacated the decision that formed the basis of ICE's breach finding for the purpose of allowing the Obligor to voluntarily depart within the time granted to him. Therefore, the record does not support ICE's determination that the bond was breached. The voluntary departure bond is reinstated.

**ORDER:** The appeal is sustained.