



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

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

In Re: 18449226

Date: MAR. 2, 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 Los Angeles, California ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the Noncitizen in accordance with the terms of the ICE Form I-352, Immigration Bond (the Immigration Bond). 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.

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

The first issue on appeal is whether ICE gave the Obligor proper notice of when and where to deliver the Noncitizen. On appeal, the Obligor states that he did not receive sufficient notice to deliver the Noncitizen.¹

ICE must personally serve an obligor with notice demanding delivery of a bonded noncitizen. 8 C.F.R. § 103.8(c). Personal service may take several forms, including sending a notice via certified or registered mail, return receipt requested. 8 C.F.R. § 103.8(a)(2).

In this instance, the record indicates that on June 19, 2020, ICE mailed ICE Form I-340, Notice to Deliver Alien, to the Obligor's address via certified mail, return receipt requested. The United States Postal Service certified mail record indicates that the notice was delivered to the Obligor's address on June 27, 2020. The ICE Form I-340 requested that the Obligor deliver the Noncitizen on [REDACTED] 2020, to the Los Angeles, California ICE Field Office. The totality of the evidence therefore indicates that ICE gave the Obligor proper and sufficient notice of when and where to deliver the Noncitizen.

The second issue on appeal is whether the Obligor substantially violated the terms of the Immigration Bond. In order to determine whether a bond violation is substantial, we consider:

- The extent of the violation;
- Whether the violation was accidental or intentional;
- Whether the violation was made in good faith; and
- Whether steps were taken to comply with the bond's terms.

See Kubacki, 18 I&N Dec. at 44. In this instance, the record indicates that the Noncitizen still has not reported to ICE, more than 18 months after the requested delivery date. The evidence of record is silent as to whether the violation was accidental or made in good faith, and whether the Obligor took steps to come into compliance with the bond's terms after the violation. Therefore, based on the extent of the violation, we find that the Obligor substantially violated the conditions of the bond's terms.

III. CONCLUSION

ICE gave the Obligor proper and sufficient notice of when and where to deliver the Noncitizen. The Obligor substantially violated the conditions of the Immigration Bond, and the Immigration Bond has been breached. The Obligor is not entitled to reinstatement of the Immigration Bond.

ORDER: The appeal is dismissed.

¹ The Obligor stated that he would submit a written brief or statement within 30 days of filing his appeal. Because no brief or statement was received, we base our adjudication on the statements made in the Obligor's Form I-290B, Notice of Appeal or Motion, and accompanying documents.