



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

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

In Re: 10882346

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 Newark, New Jersey ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the Noncitizen upon written request.

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.

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 foreign national 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 Newark, New Jersey ICE Field Office declared the bond breached, concluding that the Obligor and Co-Obligor did not deliver the bonded Noncitizen to ICE upon request.

The Co-Obligor does not assert that it delivered the Noncitizen to ICE as requested. Instead, it asserts that “[t]he issue on appeal is whether the Co-Obligor was properly served with notice of when and where to deliver the [F]oreign National.” The Co-Obligor further asserts that, if it was not properly served notice of when and where to deliver the Noncitizen, “the government’s failure caused the initial violation of the terms of the bond, and therefore negates any ‘substantial violation’ contemplated by 8 C.F.R. § 103.6(e),” among other consequences. Because we conclude that the Co-Obligor received proper notice to deliver the Noncitizen, we need not address the consequences the Co-Obligor asserts, or their merits.

Conditions of the delivery bond to which the Co-Obligor is a party include that it “shall cause the [Noncitizen] to be produced...to an immigration officer or an immigration judge of the United States, as specified in the appearance notice, upon each and every written request until exclusion/deportation/removal proceedings in his/her case are finally terminated” or the Noncitizen “is accepted by the [Department of Homeland Security] for detention or deportation/removal.”

The Co-Obligor asserts on appeal that an acceptable manner of service of ICE’s written request for the Co-Obligor to deliver the Noncitizen includes “[m]ailing a copy [of the request] by certified or registered mail, return receipt requested, addressed to [the Co-Obligor] at his last known address.”

The record establishes that ICE mailed a copy of ICE Form I-340, Notice to Obligor to Deliver Alien, to the Co-Obligor at the address it provided on the delivery bond, via U.S. Postal Service (USPS) certified mail, return receipt requested. The USPS certified mail record indicates that the delivery arrived on November 22, 2019. The record further establishes that the ICE Form I-340 specified the date, place, time, and purpose for the Obligors to deliver the Noncitizen. Therefore, we conclude that the Co-Obligor was properly served notice of when and where to deliver the Noncitizen.

The record does not support the conclusions that the Obligors’ non-delivery of the Noncitizen upon written request was accidental or made in good faith, or that the Obligors took sufficient steps to comply with the bond. Therefore, we conclude that the Obligors substantially violated the bond’s conditions. *See* 8 C.F.R. § 103.6(e); *see also Matter of Kubacki*, 18 I&N Dec. at 44.

III. CONCLUSION

The Obligor and Co-Obligor breached the bond by substantially violating its conditions. The Co-Obligor is not entitled to reinstatement of the bond.

ORDER: The appeal is dismissed.