



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

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

In Re: 20189850

Date: AUG. 02, 2022

Appeal of Immigration and Customs Enforcement (ICE) 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 Chicago, Illinois ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the bonded noncitizen upon written notice.

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 issue on appeal is whether the Obligor substantially violated the terms of the bond. In the present case, the record indicates that ICE mailed an ICE Form I-340, Notice to Deliver Alien, to the Obligor's

address of record. The Form I-340 requested that the Obligor deliver the bonded noncitizen to the Chicago, Illinois ICE Field office on [] 2021. The Obligor did not deliver the noncitizen on this date, and so ICE declared the bond breached on [] 2021.

On appeal, the Obligor submits an attorney letter and an affidavit from the bonded noncitizen which state that he mistakenly thought that his appointment was on [] 2022, and that he reported to the ICE Field Office on this date and spoke to an officer. The Obligor states that his violation of the bond's terms was minimal, accidental, and made in good faith, and so he did not substantially violate the bond's terms. He therefore requests reinstatement of the delivery bond.

USCIS records do not indicate that the noncitizen visited the ICE Field Office on [] 2022, as claimed, or at any point since then. The Obligor also did not provide any documentation of this visit beyond the affidavit. It is further noted that after the Obligor received notice of the breach, there is no indication that they sought to take steps to comply with the terms of the bond by delivering the noncitizen to the ICE Field Office.

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. at 129. Except where a different standard is specified by law, an appellant must prove eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Under the preponderance of the evidence standard, the evidence must demonstrate that the appellant's claim is "probably true." *Id.* at 376. We examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In this instance, the credibility and probative value of the noncitizen's affidavit are diminished due to the lack of corroborating evidence and the fact that the Obligor has made no attempt to deliver the bonded noncitizen since being informed of the bond breach. The evidence provided is therefore insufficient to demonstrate that the Obligor's claims that the bond violation was accidental and made in good faith are "probably true." Since nearly a year has passed since the delivery date, the violation is also extensive. Therefore, pursuant to the *Kubacki* test, we find that the Obligor substantially violated the terms of the bond, and the bond has been breached.

ORDER: The appeal is dismissed.