



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

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

In Re: 21695048

Date: AUG. 26, 2022

Motion on Administrative Appeals Office Decision

ICE Form I-352, Immigration Bond

The Obligor seeks to reinstate a delivery bond. 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 Denver, Colorado ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the bonded noncitizen upon written notice. The Obligor appealed the decision, and we denied the appeal for abandonment after the Obligor failed to respond to a request for evidence (RFE). The matter is now before us on a combined motion to reopen and reconsider.

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 review, we will grant the motion to reopen and sustain the appeal.¹

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

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).

¹ As we are granting the motion to reopen and sustaining the appeal, we decline to adjudicate the motion to reconsider.

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

A. Procedural History

On [] 2018, the Obligor signed a Form I-352, Immigration Bond, agreeing to deliver the bonded noncitizen to ICE upon each and every written request until the obligation terminates. The bonded noncitizen was ordered removed *in absentia* on [] 2019, for failing to appear at his immigration proceedings. On September 6, 2019, ICE mailed an ICE Form I-340, Notice to Deliver Alien, to the Obligor's address of record, requesting that the Obligor deliver the bonded noncitizen to the Denver, Colorado ICE Field Office on [] 2019, for removal. On October 31, 2019, ICE declared the bond breached, finding that the Obligor had not delivered the bonded noncitizen upon written request.

On December 20, 2019, the Obligor appealed ICE's decision, stating that the bonded noncitizen actually did report to the ICE Field Office on the correct date. On May 21, 2021, we issued a request for evidence (RFE), requesting probative documentation that the bonded noncitizen reported to the ICE Field Office. On November 17, 2021, we dismissed the appeal for failure to respond to an RFE by the required date. 8 C.F.R. § 103.2(b)(13)(i).

On motion to reopen, the Obligor asserts that our decision was in error and submits new facts supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2).

B. Performance of the Bond's Terms

The Obligor does not contest that she received the notice to deliver the bonded noncitizen. Therefore, the only issue on motion is whether the Obligor substantially violated the terms of the bond.

As noted above, the bonded noncitizen was ordered removed *in absentia* on [] 2019. According to the bonded noncitizen's affidavit, he arrived late to immigration court that day due to being mistaken about the time of his hearing. He asserts that he attempted to file a motion to reopen his proceedings by filling out the relevant paperwork and leaving it at the clerk's window. Subsequently, the bonded noncitizen submitted a motion to reopen the bonded noncitizen's removal proceedings on [] 2019.

According to the bonded noncitizen's affidavit, he reported to the ICE Field Office on [] 2019, as requested in the Form I-340, and he brought a copy of his motion to reopen filed the previous day. The bonded noncitizen states that upon arrival, he spoke to a security guard, who called "another officer," who in turn took the copy of the motion and told the bonded noncitizen that he could leave. However, the record does not establish that the bonded noncitizen reported to the ICE Field Office on

[redacted] 2019. According to government systems, the bonded noncitizen missed his appointment.² Thus, the Obligor has not established by a preponderance of the evidence that she delivered the bonded noncitizen upon written notice. By failing to deliver the bonded noncitizen, the Obligor violated the terms of the bond.

We will next review whether the Obligor's violation of the bond's terms was substantial. When a noncitizen files a motion to reopen after an *in absentia* removal order has been entered, the removal order is automatically stayed pending disposition of the motion. Section 240(b)(5)(C)(ii) of the Act, 8 U.S.C. 1229a(b)(5)(C)(ii). The bonded noncitizen in this instance submitted a motion to reopen with the immigration court on [redacted] 2019; however, this filing was rejected on [redacted] 2019, as improperly filed. The bonded noncitizen successfully refiled his motion on [redacted] 2019, and it was approved on [redacted] 2019, which rescinded the *in absentia* removal order.

The evidence indicates that as of [redacted] 2019, the requested delivery date, the bonded noncitizen had a pending motion to reopen, which would have stayed the *in absentia* removal order. Although that motion was subsequently rejected, it was quickly refiled and the removal order was stayed eight days later. The bonded noncitizen's proceedings were ultimately reopened, with a finding that he did come to the immigration court on the day of his hearing on [redacted] 2019.

The totality of the evidence indicates that the Obligor's violation of the bond's terms was accidental and made in good faith. The Obligor had reason to believe that with the removal order stayed, the purpose of the scheduled appearance at the Denver, Colorado ICE Field Office on [redacted] 2019, was nullified. Further, since the removal order was actually stayed within eight days of the bonded noncitizen's report date, the violation was also not extensive. We therefore find that the Obligor's violation of the bond's terms was not substantial, and the Obligor is entitled to reinstatement of the bond.

ORDER: The motion to reopen is granted and the appeal is sustained.

² We follow the presumption of regularity that public officers properly discharged their official duties. *See United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926) (the presumption of regularity supports the official acts of public officers).