U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20612269

Date: FEB. 28, 2022

Motion on Administrative Appeals Office 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 foreign national'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.

ICE declared the bond breached, concluding that the Obligor did not deliver the bonded foreign national as requested. The Obligor filed an appeal contending that ICE's initial notice arrived late, no subsequent notice was ever delivered, and that attempts to deliver the bonded foreign national were rebuffed. We dismissed the appeal, noting that there was insufficient evidence to establish that the Obligor attempted to deliver the bonded foreign national and that there was no evidence that any attempt to deliver had been made since the Obligor became aware of ICE's request.

The Obligor now files a motion to reconsider, claiming that we erred in our decision. The Obligor reiterates that he did not receive the notice from ICE until after the demanded delivery date had passed, and insists that attempts were made to deliver the bonded foreign national.

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 dismiss the motion.

I. LAW

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 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).

ICE must personally serve an obligor with notice demanding delivery of a foreign national. 8 C.F.R. § 103.8(c). Personal service may include mailing a notice by certified or registered mail, return receipt requested. 8 C.F.R. § 103.8(a)(2).

II. ANALYSIS

The Obligor has not demonstrated that our previous decision is based on an incorrect application of law or policy or that our decision is incorrect based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3).

We dismissed the Obligor's appeal noting that ICE properly served the notice and that there was insufficient evidence to establish that the Obligor substantially performed the conditions of the bond. On motion, the Obligor points to the delayed delivery of the first notice and claims that they have not received the second notice. Further, the Obligor insists that efforts were made to deliver the bonded foreign national.

First, we turn to whether ICE properly served the notice. Mailing a notice requesting that the Obligor deliver the bonded foreign national to the address of record of the Obligor via certified mail, return receipt requested, fulfills the requirements of 8 C.F.R. § 103.8(a)(2) regarding service of notice. When ICE becomes aware that the Obligor did not receive the certified mail attempt, ICE must take reasonable additional steps to notify the Obligor of the demand. *See Echavarria v. Pitts*, 641 F.3d 92, 94-95 (5th Cir. 2011) (citing *Jones v. Flowers*. 547 U.S. 220 (2006)) (sending the Form I-340 by regular mail to the address on tile after the submission by certified mail was returned as undelivered is sufficient to serve the Obligor).

Here, ICE sent the demand notices to the address the Obligor provided on the Form I-352, first by certified mail and then by regular mail. Therefore, we conclude that the record establishes that the Form I-340 was properly served.

On motion, the Obligor asserts that the Form I-340 to deliver the foreign national was delayed so he did not receive it until after the delivery date, and claims that it is a postal issue.

We note here that some of the difficulty the Obligor describes regarding the delivery of these notices may be due to his address. The Form I-352 indicates that the Obligor resided in [redacted] New York. The tracking information of the first notice indicates that the first attempted delivery was to that address in [redacted] New York, but that eventually the notice was delivered to an address in [redacted] New York. The address listed in the Obligor's appeal of ICE's determination is also in [redacted], New York. It seems possible that the Obligor moved residences after executing the bond,

but the record does not indicate that the Obligor communicated any address change to ICE[1]. Further, we note that the residence listed for the bonded foreign national on the bond was the same as the Obligor, and the record does not indicate that the bonded foreign national has submitted any change of address request to USCIS or ICE. Therefore, we conclude that the notice to deliver was properly served.

On motion, the Obligor asserts that the bond violation is not substantial because it was accidental and in good faith, and they took steps to comply with the terms of the bond. As mentioned above, there are several factors to consider when determining whether a 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. *Kubacki*, 18 I&N Dec. at 44. Here, the Obligor claims that efforts were made to deliver the bonded foreign national, and speculates that ICE failed to note the attempts in their records.

As we noted in dismissing the appeal, there is no corroborating evidence of these attempts aside from testimony from the Obligor himself. However, looking to the factors enumerated in *Kubacki,* even if we were to recognize, based solely on the word of the Obligor, that two attempts were made to fulfill the conditions of the bond, the violation of the terms of the bond would still be substantial, given the extent of the bond breach. The record does not indicate that the Obligor has made any attempt to deliver the bonded foreign national since ICE issued the notice of bond breach in March 2021, which is 11 months ago. Even if the initial breach was accidental and made in good faith, no further attempts were made to comply. Further, the duration of the violation, which is ongoing, renders it sufficiently severe to constitute a substantial violation.

III. CONCLUSION

We conclude that the Obligator has not demonstrated that our last decision was based on an incorrect application of law or policy.

ORDER: The motion to reconsider is dismissed.

[1] To assist the obligors in maintaining a correct address of record, ICE provides ICE Form I-333, Obligor Change of Address. The record does not indicate that the Obligator filed the Form I-333.