



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

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

In Re: 21364555

Date: MAR. 25, 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 Phoenix, Arizona ICE Field Office declared the bond breached, concluding that the Obligor substantially violated the bond's terms by failing to deliver the Bonded Noncitizen to ICE 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 sustain 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 delivery bond by failing to deliver the Bonded Noncitizen upon written request.

On [REDACTED] 2018, the Obligor signed an ICE Form I-352, Immigration Bond, agreeing to deliver the Bonded Noncitizen to ICE upon each and every written request until the obligation terminates. On September 24, 2021, ICE sent an ICE Form I-340, Notice to Obligor to Deliver Alien, to the Obligor's address of record. The Form I-340 requested that the Obligor deliver the Bonded Noncitizen to the Phoenix, Arizona ICE Field Office on [REDACTED] 2021. The Obligor did not deliver the Noncitizen on this date, and so on [REDACTED] 2021, ICE declared the bond breached.

On appeal, the Obligor states that they did not substantially violate the terms of the delivery bond because the Bonded Noncitizen departed the United States prior to the requested delivery date. To support this claim, they provide an ICE Form I-210, Voluntary Departure and Verification of Departure. This form is signed by an official of the Department of Homeland Security and states that the Bonded Noncitizen departed the United States on August 2, 2021.

The terms of ICE Form I-352 state that a delivery bond will be cancelled if the Bonded Noncitizen departs the United States prior to the date of any breach, as long as there is valid proof of this departure. Because the Noncitizen departed the United States prior to ICE's request for delivery and this departure was documented on the Form I-210, we find that the Obligor did not substantially violate the terms of the delivery bond. Therefore, the bond has not been breached.

ORDER: The appeal is sustained.