



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

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

In Re: 20321207

Date: MAY 9, 2022

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Co-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.

The Harlingen, Texas ICE Field Office declared the bond breached, concluding that obligors failed to deliver the alien in accordance with the terms of the Form I-352, Immigration Bond (the Immigration Bond), requiring delivery of the bonded Foreign National upon notice. As stated in the Immigration Bond "[i]f, however, the obligor fails to surrender the alien in response to a timely demand while the bond remains in effect, the full amount of the bond . . . becomes due and payable."

In these proceedings, it is the Co-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 remand the matter for further review and entry of a new decision.

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 Harlingen, Texas ICE Field Office declared the bond breached, concluding that the obligors did not deliver the bonded foreign national to ICE upon receipt of notice. On appeal, the Co-Obligor does not contest receiving the notice to deliver the Foreign National. Instead, the Co-Obligor contends that there was no breach because the bond should have been cancelled prior to the Foreign National's scheduled appearance on [REDACTED] 2021. The Co-Obligor asserts that it was unable to deliver the Foreign National because he voluntarily departed the United States on or about March 25, 2020, nearly sixteen months before the requested delivery date. The Co-Obligor also asserts they have tried to reach out to officials to cancel this bond, but have not received a cancellation.

The ICE Form I-352, Immigration Bond, states that an obligor must continue to produce the bonded foreign national upon each and every written request until the obligation terminates. The terms of a delivery bond indicate that an obligor must deliver the bonded foreign national upon each written request to do so until (1) the exclusion/deportation/removal proceedings in the foreign national's case are finally terminated; (2) the foreign national is accepted by the Department of Homeland Security for detention or deportation/removal; or (3) the bond is otherwise cancelled. The general terms and conditions of the bond further state that "[c]ancellation of a bond issued as a delivery bond shall occur upon . . . voluntary departure by the bonded alien as evidenced by valid proof thereof," so long as this departure occurs prior to the date of a breach.

On appeal, the Co-Obligor provides a copy of the Foreign National's ICE Form I-210, Voluntary Departure and Verification of Departure, as proof of the Foreign National's departure from the United States. The form also suggests that a Customs and Border Protection official confirmed the Foreign National departed the United States on March, 25, 2020 through the [REDACTED] Texas, port of entry.

We therefore question whether a substantial violation of the bond's terms in fact occurred. See 8 C.F.R. § 103.6(e). As the Applicant has submitted new and material evidence on appeal, we find it appropriate to remand the matter to the Harlingen, Texas ICE Field Office so that it may evaluate the new information and issue a new decision.

II. CONCLUSION

The matter will be remanded to the Harlingen, Texas ICE Field Office to consider the new evidence submitted on appeal and determine whether a substantial violation of the bond's terms in fact occurred.

ORDER: The decision of the ICE office is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.