U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22572705

Date: NOV. 1, 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 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 San Antonio, Texas ICE Field Office declared the bond breached, concluding that the obligors did not deliver the bonded noncitizen upon written request, as required by the terms of the delivery bond. On appeal, the Co-Obligor asserts that it is not responsible for violating the bond's conditions because it did not receive proper notice to deliver the bonded noncitizen.

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 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 two issues on appeal are: (1) whether ICE provided sufficient notice to the Co-Obligor to deliver the bonded noncitizen and, if so, (2) whether the Co-Obligor substantially violated the terms of the

delivery bond. For the reasons discussed below, ICE provided sufficient notice to the Co-Obligor, and the Co-Obligor substantially violated the terms of the delivery bond.

A. Notice

The San Antonio, Texas ICE Field Office declared the bond breached, concluding that the Obligor and Co-Obligor did not deliver the bonded noncitizen to ICE upon written request.

The regulation at 8 C.F.R. § 103.8(c) states that ICE must personally serve an obligor with notice demanding delivery of a bonded noncitizen. The regulation at 8 C.F.R. § 103.8(a)(2) states that personal service may consist of any of the following:

- Delivery of a copy personally;
- Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;
- Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at the last known address; or
- If so requested by a party, advising the party by electronic mail and posting the decision to the party's U.S. Citizenship and Immigration Services account.

On appeal, the Co-Obligor contends that the initial Form I-862, Notice to Appear (NTA), which caused the bonded noncitizen to enter immigration proceedings did not include a time and place for the bonded noncitizen to appear, and that therefore the Co-Obligor could not produce the bonded noncitizen. The Co-Obligor further asserts that "the [obligors] were not made aware of any court date by the government, and as a result the government is responsible for the failure of the noncitizen to appear in Court."

First, we note that bond proceedings are separate from immigration removal proceedings. Removal proceedings are between the United States government and a noncitizen, whereas bond proceedings concern a contract between an obligor and ICE. An NTA is issued to a noncitizen to provide notice of their immigration court removal proceedings. However, because obligors are not a party to such proceedings, they do not receive an NTA. It is not apparent from the Co-Obligor's brief how the contents of the bonded noncitizen's NTA affected the Co-Obligor's ability to produce the bonded noncitizen upon written request.

The record establishes that ICE mailed a copy of ICE Form I-340, Notice to Obligor to Deliver Alien, to the Co-Obligor at the address it provided on the delivery bond, via U.S. Postal Service certified mail, return receipt requested. The record also establishes that a signatory for the Co-Obligor signed for receipt of the ICE Form I-340. The record further establishes that the ICE Form I-340 specified the date, place, time, and purpose for the Co-Obligor to deliver the bonded noncitizen. Therefore, we conclude that the Co-Obligor was properly served notice of when and where to deliver the bonded noncitizen.

B. Substantial Violation

The second issue on appeal is whether the Co-Obligor substantially violated the terms of the immigration bond. In order to determine whether a bond violation is substantial, we consider the following *Kubacki* factors:

- The extent of the violation;
- Whether the violation was accidental or intentional;
- Whether the violation was made in good faith; and
- Whether steps were taken to get in compliance with the bond.

Kubacki, 18 I&N Dec. at 44. On appeal, the Co-Obligor claims that pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), the bonded noncitizen's NTA was invalid, and that this "severely prejudiced" the Co-Obligor's ability to deliver the bonded noncitizen. Second, the Co-Obligor claims that because of the alleged invalidity of the NTA, the bonded noncitizen's removal proceedings never actually commenced, and thus the Co-Obligor "could not have possibly produced the [bonded noncitizen]." Third, the Co-Obligor argues that the issuance of an invalid NTA "negates any 'substantial violation' contemplated by 8 C.F.R. [§] 103.6(e)."

Before addressing these assertions, we note that the Supreme Court's holding in *Pereira* was limited to the narrow issue of whether the "stop-time" rule can be triggered by an NTA that omits the time and place of the initial hearing. *See Pereira*, 138 S. Ct. 2105; *see also Santos-Santos v. Barr*, 917 F.3d 486, 489 (6th Cir. 2019); *Karingithi v. Whitaker*, 913 F.3d 1158, 1161 (9th Cir. 2019). The Court in *Niz-Chavez* held that an NTA must consist of a single document containing the time and place of an immigration hearing to trigger the "stop-time" rule in cancellation of removal cases. *Niz-Chavez*, 141 S. Ct. at 1485. ICE Form I-340 is distinguishable from a "notice to appear" under section 239(a) of the Act, and the Courts in *Pereira* and *Niz-Chavez* did not address any notice requirements with respect to ICE Form I-340 or immigration bond proceedings. An ICE Form I-340 is a "Notice to Obligor to Deliver Alien" to ICE for several possible reasons, and not a notice to a bonded noncitizen to appear at an immigration court for proceedings. Therefore, we do not find the holdings of *Pereira* or *Niz-Chavez* applicable to the current case.

Nonetheless, we will address the Co-Obligor's remaining assertions regarding whether the bond violation was substantial. With respect to the first aforementioned assertion, the Co-Obligor contends that the NTA which initiated proceedings did not include a time and place for the noncitizen to appear, and that this omission somehow prejudiced the Co-Obligor in carrying out the responsibilities to which it voluntarily agreed in the immigration bond. However, as noted above, the NTA is not intended as notice for an obligor in immigration bond proceedings. The record indicates that ICE properly issued notice to the Co-Obligor via ICE Form I-340, requesting that the Co-Obligor deliver the bonded noncitizen at a specified time and location. The Co-Obligor does not provide a rationale as to how the content of an NTA could affect their ability to deliver the bonded noncitizen upon request, and as it voluntarily agreed to do. As such, we are unpersuaded by this assertion.

With respect to the second assertion, the Co-Obligor contends that because the NTA was not properly issued, the bonded noncitizen was never actually placed in removal proceedings. However, we do not have appellate jurisdiction over the decisions of Immigration Judges in removal or exclusion

proceedings. This authority is vested in the Board of Immigration Appeals (the Board). 8 C.F.R. § 1003.1(b)(1), (3). The Board's jurisdiction also includes decisions regarding the issuance of immigration bonds. 8 C.F.R. § 1003.1(b)(7). As such, the validity of the NTA which initiated immigration removal proceedings is beyond the scope of our jurisdiction because we do not exercise appellate authority over it.

Finally, regarding the Co-Obligor's third assertion, the Co-Obligor contends that "the government's failure caused the initial violation of the terms of the bond" and that the issuance of an invalid NTA "negates any 'substantial violation' contemplated by 8 C.F.R. Sec. 103.6(e)." However, the content of an NTA is not mentioned in the terms or conditions of the ICE Form I-352, Immigration Bond, which the Co-Obligor signed and to which it agreed. Therefore, it is not apparent how the content of an NTA could violate the bond's terms.

The record indicates that a violation of the terms of the bond occurred when the Co-Obligor failed to deliver the bonded noncitizen upon written request. By failing to deliver the noncitizen upon request, the Co-Obligor violated the main condition of the immigration bond. There is no indication that this violation was accidental or made in good faith, or that the Co-Obligor has attempted to comply with the terms of the immigration bond. Therefore, the violation of the bond's terms is substantial.

III. CONCLUSION

The Co-Obligor breached the bond by substantially violating its conditions. The Co-Obligor is not entitled to reinstatement of the bond.

ORDER: The appeal is dismissed.