



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

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

In Re: 22574001

Date: NOV. 10, 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 Honolulu, Hawaii ICE Field Office declared the bond breached, concluding that the Obligor, who also is the bonded noncitizen,¹ did not appear at the ICE field office on the date provided in a written request. On appeal, the Obligor asserts that she did not receive a written request to appear at the ICE field office until ICE declared the bond breached.

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).

¹ We will refer to the bonded noncitizen in this decision either as such or as the Obligor, depending on the capacity in which she is serving.

II. ANALYSIS

There are two issues on appeal: first, whether ICE provided sufficient written notice to the Obligor prior to declaring the bond breached and, if so, whether the Obligor substantially violated the terms of the bond. For the reasons discussed below, we find that ICE provided sufficient written notice to the Obligor; however, the Obligor did not substantially violate the terms of the bond.

The record establishes that, on [REDACTED] 2018, the Obligor executed a delivery bond with ICE, conditioned on the delivery of herself as the bonded noncitizen upon written request. On July 30, 2021, ICE sent an ICE Form I-340, Notice to Obligor to Deliver Alien, to the address provided by the Obligor on the delivery bond via U.S. Postal Service certified mail, return receipt requested; however, the U.S. Postal Service returned the Form I-340 to ICE as undeliverable and unable to forward. Then, on August 27, 2021, ICE sent a Form I-340 to the Obligor at a new mailing address via U.S. Postal Service certified mail, return receipt requested. The record contains the return receipt for the Form I-340 mailed in August, signed by the Obligor, and indicating that the date of delivery was September 1, 2021. The delivered Form I-340 requested her to appear at the Honolulu, Hawaii ICE Field Office on [REDACTED] 2021. The record also establishes that, on September 28, 2021, ICE declared the delivery bond breached because she did not appear on [REDACTED], 2021, as requested.

On appeal, the Obligor denies having been “notified by mail or otherwise that I was required to report to the Honolulu ERO Sub Office on August 27, 2021; nor did I sign on any paper showing my receipt of any correspondence from U.S. Immigration and Customs Enforcement.” However, the record contains a certified mail return receipt for the Form I-340 signed by the Obligor on September 1, 2021. Thus, the record establishes that ICE provided sufficient notice for her to appear on [REDACTED] 2021, before thereafter declaring the bond breached.

The regulations regarding immigration bonds specifically provide that not all violations of the terms of a bond are substantial enough to declare the bond breached. 8 C.F.R. § 103.6(e) (providing that “[a] bond is breached when there has been a *substantial* violation of the stipulated conditions”) (emphasis added). 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 at 44.

In this case, the Obligor did not substantially violate the terms of the delivery bond. Although she did not appear at the ICE field office on [REDACTED] 2021, she appeared there on [REDACTED] 2021, after she received an ICE Form I-323, Notice - Immigration Bond Breached. The record also contains a copy of the Form I-323, indicating that it was “presented in person to [the Obligor on] [REDACTED]/2021” by ICE. Therefore, the extent of the violation in this case was eight days. *See id.*

We acknowledge the Obligor’s assertion on appeal that her violation was accidental, not intentional. *See id.* Because the Obligor promptly complied with the terms of the bond upon receipt of the Form I-323, the violation appears to have occurred in good faith. *See id.* Considering the totality of circumstances in this case and for the reasons discussed above, the Obligor did not substantially violate the terms of the delivery bond. *See* 8 C.F.R. § 103.6(e); *see also Matter of Kubacki*, 18 I&N at 44.

III. CONCLUSION

ICE provided sufficient written notice to the Obligor prior to declaring the bond breached; however, the Obligor did not substantially violate the terms of bond.

ORDER: The appeal is sustained.