



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

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

In Re: 23271173

Date: NOV. 29, 2022

Appeal 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 Miramar, Florida ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the bonded noncitizen upon written request. The matter is now before us on appeal.

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 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**

On  2012, the Obligor signed an ICE Form I-352, Immigration Bond, agreeing to deliver the bonded noncitizen upon each and every written request. On March 10, 2022, ICE sent an ICE Form

I-340, Notice to Obligor to Deliver Alien, to the Obligor's address of record via certified mail, requesting that the bonded noncitizen be delivered to the Miramar, Florida ICE Field Office on [ ] 2022, for an interview. On May 3, 2022, ICE declared the bond breached, finding that the bonded noncitizen was never delivered to the field office.

The Obligor does not assert that she delivered the bonded noncitizen to the field office. Instead, she states that her violation of the bond's terms was not substantial. Therefore, we will examine the extent of the violation, whether it was made accidentally or in good faith, and whether the Obligor attempted to come into compliance with the bond's terms. *Id.*

By failing to deliver the bonded noncitizen to the field office upon written request, the Obligor violated the central term of the bond. Furthermore, the record indicates that the bonded noncitizen still has not reported to the field office over six months after the delivery date. The violation of the breach terms is therefore extensive.

We acknowledge that the Obligor sent the noncitizen a copy of the delivery notice in order to inform him of the interview date. However, the Obligor also asserts that ICE had "nearly 15 days" following a request to reschedule the appointment before declaring the breach, which demonstrates her good faith effort to perform the terms of the bond. We disagree. The certified mail record indicates that the Obligor received notice to deliver the bonded noncitizen on March 22, 2022, but the rescheduling request was not made until [ ] 2022. The bonded noncitizen's attorney sent one copy of the request by mail, which was received by ICE on April 20, 2022, [ ] before the scheduled interview. The other copy was sent by email to the ICE field office's appointment scheduling inbox at 11:33pm on [ ] 2022, and the attorney received an automatic response indicating that the office has a high volume of cases and scheduling an appointment could require an extended wait period. They did not attempt to contact the field office by phone.

Having received no response to the rescheduling request as of the delivery date, the bonded noncitizen and Obligor had no reason to believe that the interview appointment had been changed or cancelled. The bonded noncitizen nonetheless did not report to the field office. Therefore, we do not find that the violation was accidental or made in good faith. Finally, there is no indication that the Obligor has made any efforts to comply with the bond's terms since the breach notice.

Upon a review of the *Kubacki* factors, we conclude that the Obligor has not established that the bond violation was accidental or made in good faith. Furthermore, no efforts have been made to comply with the bond's terms in the months since the breach, making the violation an extensive one. While we acknowledge that the Miramar, Florida ICE Field Office is a four-hour drive from the bonded noncitizen's home, this does not release the Obligor from her contractual obligation to deliver the bonded noncitizen upon written request. We further note that the bonded noncitizen had a month to make travel arrangements before the delivery date and an additional six months to do so after the breach, and they still have not reported to the field office. Therefore, we conclude that the Obligor substantially violated the terms of the bond, and the bond has been breached.

**ORDER:** The appeal is dismissed.