



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

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

In Re: 07397622

Date: NOV. 29, 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 San Francisco, California ICE Field Office declared the bond breached, concluding that the bonded noncitizen had not been delivered 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 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

On 2016, the Obligor signed an ICE Form I-352, Immigration Bond, agreeing to deliver the bonded noncitizen to ICE upon each and every written request. On May 7, 2019, 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 noncitizen be delivered to the San Francisco, California ICE Field Office on [] 2019, for removal. The delivery was signed for on May 14, 2019. On [], 2019, ICE declared the bond breached, finding that the noncitizen was never delivered to the field office.

A. Notice of Delivery Request

The first issue on appeal is whether the Obligor received valid notice to deliver the noncitizen. In their brief, the Obligor contends that they did not receive sufficient notice because the initial Form I-862, Notice to Appear (NTA), which caused the bonded noncitizen to enter removal proceedings did not include a time and place for the noncitizen to appear. The brief submitted on appeal states 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 alien to appear in Court."

First, we note that bond proceedings are separate from immigration removal proceedings. An NTA is issued to a noncitizen to provide notice of their immigration court removal proceedings. A Form I-340 is issued to an obligor to provide notice of when to deliver a bonded noncitizen to an ICE field office. It is not apparent from the Obligor's brief how the contents of the noncitizen's NTA, to which the Obligor was not a party, affected the Obligor's ability to produce the noncitizen upon written request.

The record indicates that ICE correctly sent Form I-340 to the Obligor via personal service by sending it to their address of record via certified mail, return receipt requested. 8 C.F.R. § 103.8(a)(2)(iv). The Form I-340 clearly indicated the time and place to deliver the noncitizen. Therefore, the Co-Obligor received sufficient notice to deliver the noncitizen.

B. Violation of the Bond's Terms

The second issue on appeal is whether the Obligor's violation of the bond's terms was substantial. The Obligor states that pursuant to *Pereira v. Sessions*, 138 S. Ct. 215 (2018), the noncitizen's NTA was invalid, and so removal proceedings never actually commenced, asserting that they therefore "could not possibly have produced" the noncitizen. They further contend that the NTA "severely prejudiced" the Obligor's ability to deliver the noncitizen, and that since "the government's failure caused the initial violation of the terms of the bond," this "negates any 'substantial violation' contemplated by 8 C.F.R. Sec. 103.6(e)."

First, it is noted that the Supreme Court's holding in *Pereira* is 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 *Karingithi v. Whitaker*, 913 F.3d 1158, 1161 (9th Cir. 2019); *Santos-Santos v. Barr*, 917 F.3d 486, 489 (6th Cir. 2019). The Court in *Pereira* did not address any notice requirements with regards to ICE Form I-340 or immigration bond proceedings. We therefore do not find the holdings of *Pereira* applicable to the current case.

Furthermore, the Obligor's arguments regarding the validity of the noncitizen's removal proceedings are beyond the scope of the current appeal, which is limited to the issue of whether the Obligor is entitled to reinstatement of the immigration bond. The AAO does 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 (BIA). 8 C.F.R. § 1003.1(b)(1), (3). The BIA's jurisdiction also includes decisions regarding the issuance of immigration bonds. 8 C.F.R. § 1003.1(b)(7). Because AAO does not exercise appellate authority over the validity of NTAs, removal proceedings, or bond issuance, we will not address these arguments further.

The Obligor's brief does not explain how the noncitizen's NTA violated the terms of the bond contract, given that there is no mention of NTAs in the Form I-352's terms and conditions. As noted above, the brief also does not explain how the NTA, which was issued in 2006, interfered with the Obligor's ability to perform the terms of the bond in 2019.

By failing to deliver the bonded noncitizen upon written request, the Obligor violated the main condition of the delivery bond. There is no indication that this violation was accidental or made in good faith, or that the Obligor has attempted to comply with the terms of the immigration bond. Therefore, pursuant to the *Kubacki* factors, we find that the violation of the bond's terms was substantial, and the bond has been breached.

ORDER: The appeal is dismissed.