



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

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

In Re: 26081098

Date: APR. 5, 2023

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 Bernardino, California, ICE ERO Field Office declared the bond breached, concluding that the Obligor did not deliver the Bonded Noncitizen upon written request. The matter is 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 sustain the appeal.

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 bonded 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).

The Obligor executed a delivery bond on behalf of the Bonded Noncitizen on [] 2020. In relevant part, the Obligor's duties under the terms of the delivery bond include delivering the Bonded Noncitizen to ICE upon written request until the Bonded Noncitizen's removal proceedings are finally terminated. On October 13, 2022, ICE mailed an ICE Form I-340, Notice to Obligor to Deliver Alien, to the Obligor's mailing address of record. The Form I-340 requested the Obligor to deliver the Bonded Noncitizen to the San Bernardino, California, ICE ERO Field Office on November 15, 2022. On November 16, 2022, ICE mailed an ICE Form I-323, Notice – Immigration Bond Breached, to the Obligor's mailing address of record, declaring the bond breached because the Obligor did not deliver the Bonded Foreign National on November 15, as requested on the Form I-340.

On appeal, the Obligor concedes that he “did not produce [the Bonded Noncitizen] on November 15, 2022 and instead requested that the bond funds be returned in light of the final termination of proceedings and cancellation of the bond contract.” Specifically, the Obligor asserts that the Bonded Noncitizen’s “proceedings were terminated on August 20 [sic], 2022. No appeal was filed by the Department and the order terminating proceedings became final on September 20, 2022,” prior to the date on which ICE requested the Obligor to deliver the Bonded Noncitizen in November.

The record contains a copy of an Immigration Judge (IJ) order dated [] 2022, granting the Bonded Noncitizen’s motion to terminate proceedings. The order indicates that the Department of Homeland Security (DHS) did not oppose the motion and the IJ granted it without prejudice, in relevant part so that DHS could “issue a new NTA.” The record also contains evidence indicating that the IJ served DHS a copy of the motion terminating the Bonded Noncitizen’s removal proceedings electronically on [] 2022. The Obligor submits on appeal a copy of the Executive Office of Immigration Reform (EOIR) Automated Case Information for the Bonded Noncitizen’s case, indicating that, as of December 6, 2022, DHS did not appeal the IJ’s decision to terminate the Bonded Noncitizen’s proceedings; however, the order does not appear to contemplate a DHS appeal because the “Appeal Due” field is blank. We note, however, that the record establishes that ICE sent a DHS Form I-862, Notice to Appear, to the Bonded Noncitizen by regular mail on November 16, 2022; therefore, ICE served the Form I-862 on that date. *See* 8 C.F.R. § 103.8(b).

We take administrative notice that EOIR records indicate that there are two separate proceedings for the Bonded Noncitizen. The first proceeding terminated on [] upon the IJ’s order. The second proceeding’s “Charging Document” and “Case Input” dates are both “11-16-2022,” matching the date on which ICE served the Form I-862.

Under the terms of the delivery bond, the IJ’s termination of the Bonded Noncitizen’s removal proceedings in [] 2022 terminated the bond and released the Obligor from his duty to deliver the Bonded Noncitizen. Specifically, paragraph G(1) of the delivery bond states, “if . . . the [O]bligor shall cause the [Bonded Noncitizen] to be produced . . . to an immigration officer or immigration judge . . . as specified in the appearance notice . . . until exclusion/deportation/removal proceedings in his/her case are finally terminated . . . , this obligation shall terminate.” EOIR records indicate that the 2022 Form I-862 initiated separate proceedings against the Bonded Noncitizen, rather than continuing the pre-existing proceedings against him. Moreover, even to the extent that the delivery bond did not automatically terminate in connection with the IJ’s termination of the Bonded Noncitizen’s prior removal proceedings, ICE sent the Form I-340 to the Obligor before it sent the Form I-862 to the Bonded Noncitizen, as contemplated by the IJ’s order. Because the Form I-340 is dated both *after* the date on which the IJ terminated the Bonded Noncitizen’s prior removal proceedings and *before* the “Charging Document” and “Case Input” dates of the 2022 removal proceedings, the Form I-340 did not validly request the Obligor to deliver the Bonded Noncitizen to ICE in connection with extant removal proceedings against the Bonded Noncitizen. As such, the Obligor’s failure to deliver the Bonded Noncitizen would not be a violation of the terms of the delivery bond, if the bond itself had not already terminated; therefore, we need not determine whether that furthermore rises to the level of a substantial violation.

In summation, although the Obligor may execute a new bond on behalf of the Bonded Noncitizen in connection with the new, 2022 removal proceedings, the IJ's termination of the prior removal proceedings terminated the delivery bond in question, releasing the Obligor from his obligations thereunder, before the date on which ICE requested the Obligor to deliver the Bonded Noncitizen. Although ICE initiated new removal proceedings against the Bonded Noncitizen, its request for the Obligor to deliver the Bonded Noncitizen was dated both after the prior proceedings and before the new proceedings. ICE's determination that the Obligor breached the delivery bond in the interim is in error.

ORDER: The appeal is sustained.