



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

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

In Re: 25652593

Date: JUNE 14, 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 Detroit, Michigan, ICE 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 dismiss 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 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).

The record establishes that ICE sent the Obligor an ICE Form I-340, Notice to Obligor to Deliver Alien, to the Obligor's address dated August 26, 2022, via U.S. Postal Service Certified Mail, return receipt requested. The Form I-340 requested, in writing, that the Obligor deliver the Bonded Noncitizen to the Detroit, Michigan, ICE Field Office on September 28, 2022, at 9 a.m., for the purpose of an "interview." The record further establishes that ICE sent the Obligor an ICE Form I-323, Notice – Immigration Bond Breached, dated September 30, 2022, on the basis that the Obligor did not deliver the Bonded Noncitizen to ICE upon written request. The record does not establish that the Bonded

Noncitizen either reported to ICE, as requested, or departed the United States.

On appeal, the Obligor specifically acknowledges “receiving notice to deliver alien” from ICE; however, he asserts that he “tried to reach unsuccessfully [the Bonded Noncitizen].” The Obligor also states that he “believed that the [Bonded Noncitizen] was properly notified but he was not.” The Obligor further asserts on appeal that the Bonded Noncitizen “will be available at the date and time [ICE] request[s].”

The record establishes that ICE provided sufficient notice to the Obligor to deliver the Bonded Noncitizen. Because a delivery bond is a contract between the U.S. Government and an obligor, *see United States v. Minn. Tr. Co.*, 59 F.3d at 90; *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. at 125, whether ICE directly notified a bonded noncitizen to report at a certain place, date, and time, is beyond the scope of review for an appeal of a delivery bond breach determination. Instead, the issue, in relevant part, is whether ICE properly notified an *obligor* to deliver the bonded noncitizen. Because the Obligor specifically acknowledges on appeal that he received ICE’s notice to him to deliver the Bonded Noncitizen, and furthermore because ICE provided the Obligor approximately one month’s advance notice to deliver the Bonded Noncitizen, service of notice in this matter was sufficient.

Turning to the *Kubacki* factors, the record supports ICE’s conclusion that the Obligor substantially violated the terms of the delivery bond. *See* 8 C.F.R. § 103.6(e); *Matter of Kubacki*, 18 I&N Dec. at 44. Neither the record nor Department of Homeland Security records establish that the Obligor delivered the Bonded Noncitizen to ICE since ICE issued the Form I-340; therefore, the extent of the violation spans many months and it is ongoing. Additionally, although the Obligor discusses on appeal his mistaken beliefs regarding ICE’s communication with the Bonded Noncitizen regarding the need to report for an interview, the Obligor nonetheless acknowledges that he received notice to deliver the Bonded Noncitizen and he does not establish that his nonperformance of his obligations under the terms of the delivery bond was either accidental or in good faith. Furthermore, although the Obligor offers on appeal that the Bonded Noncitizen “will be available at the date and time [ICE] request[s],” ICE has already provided written notice of the place, date, and time it requested the Obligor to deliver the Bonded Noncitizen, shifting the burden to the Obligor to deliver the Bonded Noncitizen. The record does not establish that the Obligor took steps to comply with the terms of the bond and mitigate the ongoing breach since ICE properly notified him of his obligation to deliver the Bonded Noncitizen.

Because the extent of the violation spans many months and it is ongoing, the record does not establish the Obligor’s failure to deliver the Bonded Noncitizen upon written request was accidental or in good faith, and the record does not establish the Obligor took steps to comply with the terms of the bond, the record supports ICE’s conclusion that the Obligor substantially violated the terms of the delivery bond. *See id.*

ORDER: The appeal is dismissed.