



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

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

In Re: 25527981

Date: MAR. 21, 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 Antonio, Texas, 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 the Obligor married the Bonded Noncitizen in 2003. The Obligor later executed a delivery bond with ICE for the Bonded Noncitizen in 2012. On July 26, 2022, ICE sent an ICE Form I-340, Notice to Obligor to Deliver Alien, to the Obligor at address of record—which matches the mailing address provided by the Obligor when filing the appeal—by U.S. Postal Service (USPS) Certified Mail, return receipt requested. The Form I-340 instructed the Obligor to deliver the Bonded Noncitizen to the San Antonio, Texas, ICE Field Office on September 8, 2022. However, USPS returned the Form I-340 to ICE as undeliverable and unable to forward. Then, on September 8, 2022, ICE sent a second Form I-340 to the address of record by USPS First Class Mail, instructing the

Obligor to deliver the Bonded Noncitizen to the San Antonio, Texas, ICE Field Office on October 12, 2022. The record does not indicate that USPS returned the second Form I-340 to ICE as undeliverable, and the Obligor does not assert on appeal that she did not receive written notice to deliver the Bonded Noncitizen to ICE. We note that the purpose for delivery provided on both Forms I-340 was “interview,” not “removal.” On October 17, 2022, ICE notified the Obligor that it declared the bond breached because the Obligor did not deliver the Bonded Noncitizen to ICE on October 12 as instructed on the second Form I-340.

On appeal, the Obligor provides a copy of a divorce decree, indicating that the Obligor and the Bonded Noncitizen divorced in 2016. The Obligor asserts that she changed the surname of her “legal name” at some unspecified date; however, the record does not contain evidence of her legal name change. The Obligor further asserts that she is not in contact with the Bonded Noncitizen, and that “last I knew was that he left back to Mexico when we divorced.” However, the Obligor does not submit on appeal, and the record does not contain, evidence that the Bonded Noncitizen has departed the United States, either as of the date on which ICE requested the Obligor to deliver him for an interview or thereafter.

Additionally, the Obligor does not assert, and the record does not support the conclusion, that ICE erred by concluding the Obligor substantially violated the terms of the delivery bond when she did not deliver the Bonded Noncitizen as requested on the second Form I-340. Specifically, the extent of the violation is several months and still ongoing; the record does not establish that the violation was accidental or in good faith; and the record furthermore does not establish that the Obligor has taken steps to comply with her obligation to deliver the Bonded Noncitizen to ICE upon written request, under the terms of the delivery bond. *See Kubacki*, 18 I&N Dec. at 44. Neither the Obligor and Bonded Noncitizen’s marital status nor the Obligor’s current surname, discussed on appeal, affect the Obligor’s duty to deliver the Bonded Noncitizen to ICE upon written request. Therefore, the record establishes that the Obligor substantially violated the terms of the delivery bond. *See id*; *see also* 8 C.F.R. § 103.6(e). The Obligor is not entitled to reinstatement of the delivery bond.

ORDER: The appeal is dismissed.