



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

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

In Re: 11095545

Date: MAR. 28, 2022

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Obligor¹ seeks to reinstate a voluntary departure 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 Dallas, Texas ICE Field Office declared the bond breached, concluding that the Obligor substantially violated the terms of the ICE Form I-352, Immigration Bond (the Immigration Bond), by failing to depart the United States. 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 voluntary departure bond is a contract between the U.S. Government and an obligor. In exchange for a grant of voluntary departure, an obligor posts a bond as security for the noncitizen's departure from the United States, or the noncitizen's return to ICE custody, on or before the date specified in an order granting voluntary departure. *See* 8 C.F.R. § 103.6(c)(2); *see also* 8 C.F.R. § 1240.26.

An obligor must provide to ICE probative documentation of the noncitizen's voluntary departure within 30 days after the date specified in the order granting voluntary departure. An obligor's substantial performance of a bond's conditions. 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)

¹ In this instance, the bonded Noncitizen posted the voluntary departure bond, providing himself as the Obligor. We refer to the Noncitizen in this decision either as such or as the Obligor, depending on the capacity in which he is serving.

(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 [] 2018, an immigration judge granted the Noncitizen voluntary departure. On June 28, 2018, the Noncitizen signed the Immigration Bond, agreeing to depart the United States by August 20, 2018. On July 10, 2018, the Noncitizen filed an appeal to the Board of Immigration Appeals (the Board), which stayed the execution of the voluntary departure decision. 8 C.F.R. § 1003.6(a). The appeal was dismissed on [] 2019, at which time the stay ended. *Id.* In the dismissal, the Board declined to reinstate the Noncitizen's voluntary departure period and ordered him removed.

On January 23, 2020, the Noncitizen filed a motion to reopen with the Board.² On February 18, 2020, ICE issued a bond breach notice to the Obligor for his failure to depart the United States. The Noncitizen's motion was denied by the Board on April 23, 2020. The Noncitizen still has not departed the United States.

The issue on appeal is whether the Obligor is entitled to reinstatement of his bond. On appeal, the Obligor asserts that "[a] removal order is not final until appeals before the Board are final," and states that as of the time of the instant appeal, his motion before the Board was still pending. He contends that due to these circumstances, he did not substantially violate the terms of his bond.

To support this claim, the Obligor includes a copy of the filing receipt for a motion before the Board. We note that this receipt states in pertinent part that "[f]iling a motion with the [Board] DOES NOT automatically stop the Department of Homeland Security from executing an order of removal or deportation." As noted above, the Board ordered the Noncitizen removed when his appeal was decided. This order was not stayed by the motion filing. *See* 8 C.F.R. § 1240.26(e)(2).

Finally, as noted above, the motion was denied by the Board on April 23, 2020. Nearly two years later, the Noncitizen has still not departed the United States. This is an extensive violation of the central term of his voluntary departure bond.

The evidence of record indicates that the Obligor's violation of his bond terms has been deliberate, and he has not taken measures to comply with the bond's terms since his appeal was dismissed by the Board. We therefore find that the Obligor has substantially violated the terms of his Immigration Bond, and the Immigration Bond is breached. We deny his request to reinstate the Immigration Bond.

ORDER: The appeal is dismissed.

² The filing of a motion after the time allowed for voluntary departure has already expired does not impact the period of allowed for voluntary departure. 8 C.F.R. § 1240.26(e)(2).