



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

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

In Re: 28077253

Date: AUG. 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 Tallahassee, Florida, ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the Bonded Noncitizen upon written request, as required.

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 December 12, 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 Tallahassee, Florida, ICE Field Office on January 25, 2023, at 9 a.m., for the purpose of "removal." The record further establishes that ICE sent the Obligor an ICE Form I-323, Notice – Immigration Bond Breached, dated January 27, 2023, 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 asserts that she received the ICE Form I-340 and that she informed the Bonded Noncitizen of ICE's request. The Obligor further states on appeal that both her husband and a pastor discussed the consequences of disregarding ICE's request with the Bonded Noncitizen; however, the Obligor informs that the Bonded Noncitizen told her that "he had talked to his lawyer & was told he 'didn't have to go—not to worry about it.'" The Obligor asserts that the Bonded Noncitizen "refuses" to report to ICE upon written request and she requests "mercy."

The record does not support the Bonded Noncitizen's lawyer's conclusion that the Bonded Noncitizen was not required to report to ICE upon written request. On the contrary, as noted above, the ICE Form I-340 specifically indicates that the purpose for the Bonded Noncitizen's appearance is for "removal," in compliance with an Immigration Judge's (IJ's) removal order dated [REDACTED] 2022. Neither the Bonded Noncitizen nor the Obligor have the discretion not to comply with the IJ's removal order and ICE's written request for the Obligor to deliver the Bonded Noncitizen under the terms of the delivery bond, respectively. Similarly, we do not have the discretion to disregard a substantial violation of the terms of a delivery bond, as the Obligor requests. *See generally* 8 C.F.R. § 103.6.

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 not only her efforts but also those of her husband and a pastor to convince the Bonded Noncitizen to report to ICE, the Obligor nonetheless acknowledges that she received notice to deliver the Bonded Noncitizen and she does not establish that her nonperformance of her obligations under the terms of the delivery bond was either accidental or in good faith. On the contrary, the Obligor characterizes the Bonded Noncitizen's noncompliance as "refus[al]," indicating both intent and bad faith. The record also 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 her of her 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.