

(b)(6)



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

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

MATTER OF F-N-P-

DATE: NOV. 3, 2015

APPEAL OF IMMIGRATION AND CUSTOMS ENFORCEMENT, NEW YORK FIELD OFFICE
DECISION

FORM: ICE FORM I-352, IMMIGRATION BOND

The Obligor seeks to reinstate a delivery bond. *See* 8 C.F.R. § 103.6(e). The Field Office Director, Immigrations and Customs Enforcement (ICE), New York, New York, declared the bond breached. The matter is now before us on appeal. The appeal will be dismissed.

The record indicates that on February 26, 2013, the Obligor posted a \$14,000 bond conditioned upon the delivery of the above referenced alien. A Form I-340, Notice to Obligor to Deliver Alien, dated July 16, 2014, was sent to the Obligor via certified mail. The notice demanded the Bonded Alien's surrender into the custody of ICE at 9:00 a.m. on August 20, 2014, at [REDACTED], NY [REDACTED]. The Obligor did not present the Bonded Alien, and the Bonded Alien did not appear as required. On September 9, 2014, the Director issued a Form I-323, Notice-Immigration Bond Breached, which informed the Obligor that the delivery bond had been breached.

On appeal, the Obligor acknowledges receipt of the Notice to Obligor to Deliver Alien, but asserts that he was told he was not required to comply. The Obligor contends that on July 24, 2014, the Bonded Alien's removal proceedings were reopened by an immigration judge. The Obligor asserts as the removal proceedings were reopened, it was no longer applicable for the Bonded Alien to appear for removal on August 20, 2014. The Obligor states that a copy of the Order of the Immigration Judge issued on July 24, 2014, was provided to the New York Field Office by his counsel, and that his counsel was informed to disregard the Notice to Obligor to Deliver Alien and to produce the Bonded Alien after the court date of October 24, 2014. The Obligor indicates he does not have documentation from the New York Field Office to corroborate what occurred during that visit. The Obligor states that based on the information his counsel received and the reopening of the Bonded Alien's removal proceedings, the bond should be reversed.

The record reflects that a removal hearing was held on [REDACTED] 2014, and the Bonded alien was ordered removed *in absentia*. On June 13, 2014, the Bonded Alien filed a motion to reopen before the court, and the proceedings were reopened on July 24, 2014.

The Director properly exercised his authority by directing the Obligor to produce the Bonded Alien. Nothing in the terms of the Obligor's bond, as stated in Form I-352, relieves him of his

responsibility to deliver the Bonded Alien at the time and place specified in the demand notice because removal proceedings were reopened. Pursuant to the terms of the bond, the Obligor is relieved of his responsibility to deliver the Bonded Alien upon request if the Obligor produces the Bonded Alien as requested, if the Bonded Alien is accepted by the Department of Homeland Security for detention or deportation / removal, or the bond is otherwise cancelled. None of these conditions were fulfilled when the Bonded Alien's removal proceedings were reopened. Nor does the record contain any documentation indicating that the Director otherwise relieved the Obligor from his responsibility to deliver the Bonded Alien as requested on the Form I-340. Therefore, the Obligor was not released from his obligation to deliver the Bonded Alien as requested.

As the Obligor did not produce the Bonded Alien as requested, we find there was a substantial violation of the conditions of the delivery bond. The regulations provide that an obligor of a bond shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). However, a bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e). Delivery bonds are violated if the obligor does not produce the bonded alien to an immigration officer upon each and every request until proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg'l Comm'r. 1977).

We also find that the Obligor was properly served with the Notice to Obligor to Deliver Alien. Mailing of a notice requesting surrender of the bonded alien to the address of record of the obligor via certified mail, return receipt requested, fulfills the requirements of 8 C.F.R. § 103.5a(2) [now 103.8(a)(2)] respecting service of notice. *Id.* In any proceeding which is initiated with the proposed adverse effect, service of the initiating notice and of notice of any decision issued by an immigration officer shall be accomplished by personal service. 8 C.F.R. § 103.8(c). The Notice to Obligor to Deliver Alien is a request which is performed by personal service.

The regulation at 8 C.F.R. § 103.8(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(b)(6)

Matter of F-N-P-

(v) If so requested by a party, advising the party by electronic mail and posting the decision to the party's USCIS account.

The evidence of record indicates that the Notice to Obligor to Deliver Alien dated July 16, 2014, was sent to the Obligor at [REDACTED] NY [REDACTED] via certified mail. This notice demanded that the Obligor produce the Bonded Alien on August 20, 2014. The U.S. Postal Service PS Form 3811, Domestic Return Receipt, indicates the Obligor received this notice to produce the Bonded Alien. Consequently, the record establishes that the notice was properly served on the Obligor in compliance with 8 C.F.R. § 103.8(a)(2)(iv).

As stated above, the language in the bond agreement indicates that the Obligor shall cause the Bonded Alien to be produced or the Alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the Bonded Alien is accepted by ICE for detention or removal.

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the Director will not be disturbed.

ORDER: The appeal is dismissed.

Cite as *Matter of F-N-P-*, ID# 15736 (AAO Nov. 3, 2015)