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

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

MATTER OF L-O-G-

DATE: MAY 18, 2016

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT SAN ANTONIO, TEXAS  
DECISION

FORM: ICE FORM I-352, IMMIGRATION BOND

The Obligor seeks to reinstate a delivery bond. *See* Immigration and Nationality Act (the Act) section 103, 8 U.S.C. § 1103. An obligor posts an immigration bond as security for a bonded alien's compliance with bond conditions, and U.S. Immigration and Customs Enforcement (ICE) may issue a bond breach notice upon a substantial violation of these conditions.

ICE Field Office Director, San Antonio, Texas, declared the bond breached.

The matter is now before us on appeal. In the appeal, the Obligor submits additional evidence and claims that the Bonded Alien could not be delivered to ICE on [REDACTED] 2015, as the Bonded Alien sought sanctuary at the [REDACTED] in [REDACTED] Texas on the same date. The Obligor states that on [REDACTED] 2015, the Bonded Alien presented herself to ICE, and was released under an order of supervision. The Obligor asserts that the Bonded Alien filed a Form I-246, Application for Stay of Removal, which was subsequently granted by ICE. The Obligor states that there is no underlying cause for the bond to be breached as the actions of ICE in placing the Bonded Alien under an order of supervision and granting the Form I-246 are clear evidence ICE did not intend to effect the removal of the Bonded Alien at that time. The Obligor adds that the Bonded Alien has a Form I-914, Application for T Nonimmigrant Status, pending before U.S. Citizenship and Immigration Services. The Obligor contends that in light of the complexity of the issues in Bonded Alien's case, she was not able to seek legal representation until after the surrender date.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Obligor is seeking reinstatement of a bond. 8 C.F.R. § 103.6 provides, in pertinent part:

(a) *Posting of surety bonds-*

- (1) *Extension agreements; consent of surety; collateral security.* All surety bonds posed in immigration cases shall be executed on Form I-352, Immigration Bond, a copy of which, and any rider

attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond . . . .

. . . .

(c) *Cancellation*

. . . .

(3) *Substantial performance.* Substantial performance of all conditions imposed by the terms of a bond shall release the obligor from liability.

. . . .

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions . . . . The district director having custody of the file containing the immigration bond executed on Form I-352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I-323 or Form I-391 of the decision and, if declared breached, of the reasons therefor . . .

In accordance with 8 C.F.R. § 103.8(c), an obligor is entitled to personal service of ICE Form I-340. Notice to Obligor to Deliver Alien. 8 C.F.R. § 103.8(c), in pertinent part, provides:

(c) When personal service required-

(1) Generally. In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service . . . .

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;

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- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.
- (v) If so requested by a party, advising the party by electronic mail and posting the decision to the party's USCIS account.

## II. FACTS AND PROCEDURAL HISTORY

Pursuant to a Form I-352, Immigration Bond, dated February 10, 2015, the Obligor posted a \$15,000 bond conditioned upon the delivery of the above referenced alien. A Form I-340, Notice to Obligor to Deliver Alien, dated May 11, 2015, was sent to the Obligor via certified mail. The Form I-340 demanded the Bonded Alien's surrender into the custody of ICE at 8:00 a.m. on [REDACTED] 2015, at [REDACTED] TX [REDACTED]. The Obligor did not present the Bonded Alien, and the Bonded Alien did not appear as required. A Form I-323, Notice-Immigration Bond Breached, dated July 24, 2015, was sent to the Obligor via certified mail. On July 24, 2015, the Director issued a Form I-323, Notice-Immigration Bond Breached, which informed the Obligor that the delivery bond had been breached on [REDACTED] 2015.

Subsequent to the breach, on [REDACTED] 2015, the Bonded Alien presented herself to ICE and filed a Form I-246, and a Form I-220B, Order of Supervision, was issued by ICE. ICE granted the Form I-246 on [REDACTED] 2015, for 1 year.

## III. ANALYSIS

As stated above, the Obligor is seeking reinstatement of a delivery bond. The Director concluded that the delivery bond had been breached as the conditions of the bond had been violated when the Obligor did not produce the Bonded Alien at the time and place specified in the Form I-340.

Citing to case law, the Obligor, on appeal, lists the four factors in determining whether a violation of a bond is substantial. The Obligor contends that there has not been a substantial violation of the conditions of the bond because the Bonded Alien took steps to make amends and placing herself in compliance by presenting herself to ICE on [REDACTED] 2015. The Obligor adds that as the Bonded Alien has permission to remain in the United States for a period of 1 year, the bond breach should not be considered substantial. The Obligor cites *Bahramizadeh v. U.S. I.N.S.*, 717 F.2d 1170, 1173 (7th Cir. 1983) ("Moreover, in light of [the alien's] now permanent visa status, the breach appears to be less than substantial.") in support of his assertion.

The Obligor submits copies of Forms I-340, I-323, I-246, and I-220B, and a Form I-797C, Notice of Action, relating to receipt of the Bonded Alien's Form I-914. We find the record establishes that the conditions of the bond have been substantially violated.

Delivery bonds are violated if the obligor does not cause the bonded alien to be produced to an immigration officer upon each and every request until proceedings are finally terminated, or until the

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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).

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.*

As stated above, the Form I-340 dated May 11, 2015, was sent to the Obligor at [REDACTED] TX [REDACTED] via certified mail. 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). In addition, the U.S. Postal Service PS Form 3811, Domestic Return Receipt, indicates that the delivery of the Form I-340 was signed for by a recipient at the Obligor's address of record on May 15, 2015.

The Obligor contends that due to the complexity of the issues in the Bonded Alien's case, legal representation was not obtained until after the surrender date had expired. The lack of legal representation or complexity of a case, however, is not a condition upon which the Obligor's obligations are excused under the terms of the bond.

The determination of whether a bond violation is substantial within the meaning of 8 C.F.R. § 103.6(c), requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether it was intentional or accidental on the part of the alien;
- (c) Whether it was in good faith; and
- (d) Whether the alien took steps to make amends or to put himself in compliance.

*See Matter of Kubacki*, 18 I&N Dec. 43 (Reg'l Comm'r 1981) (citing *International Fidelity Insurance Company v. Crosland*, 490 F Supp. 466, 448 (S.D.N.Y. 1980).

The extent of the breach was significant, because the Obligor did not deliver the Bonded Alien as requested. The Obligor contends the breach was remediated when the Bonded Alien presented herself to ICE on [REDACTED] 2015. However, unlike in *Matter of Kubacki*, where the alien departed the United States 3 weeks after his authorized stay expired, this remediation was not timely, as it occurred over 2 months after the requested date. Nor can we attribute the Bonded Alien's appearance to her desire to put herself in compliance with the terms of the bond, as she appeared in conjunction with a request for benefits.

Furthermore, there is no assertion or documentation demonstrating that the breach was accidental instead of intentional, as the Obligor does not contend that the Bonded Alien was unaware of, or mistook, the delivery date.<sup>1</sup> We also do not find that the breach was in good faith. Again, the Bonded Alien was aware of the delivery date. On that date, instead of presenting herself to ICE, the Bonded Alien sought sanctuary with a church and avoided compliance. Despite the Obligor's claim that the Bonded Alien could not present herself on the delivery date because she sought sanctuary at a church, there is nothing indicating that such an action would necessarily prevent her from fulfilling her legal obligations.

The Obligor contends that because the Bonded Alien now has permission to remain in the United States for 1 year, the bond breach should not be considered substantial under *Bahramizadeh*. In *Bahramizadeh*, the plaintiff had substantially breached the bond, which was conditioned upon the plaintiff maintaining lawful immigration status, when the plaintiff remained in the United States after his student visa authorization had expired. Prior to expiration of his student visa, the plaintiff married a U.S. citizen and a Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, was filed on his behalf. The former Immigration and Naturalization Services (INS) advised the plaintiff on 3 separate occasions (2 of which were prior to the breach) that because a petition had been filed by his spouse there was no need for him to extend his visa. Based on the former INS' advisement, the court found that the plaintiff attempted to comply with the terms of the bond, that he acted in good faith and did not willfully breach the terms of his bond.

Unlike the plaintiff in *Bahramizadeh*, though, the bond in the present matter is not conditioned upon the Bonded Alien's remaining in valid immigration status. Thus, permission for the Bonded Alien to remain in the United States for 1 year does not have any bearing on the obligations under the bond contract. The Obligor remains bound under the terms of the contract to deliver the Bonded Alien upon each and every written request. We therefore conclude that the Obligor substantially violated the terms of the immigration bond.

Lastly, the Obligor, on appeal, asserts that the Bonded Alien has a pending Form I-914, and submits a copy of a Form I-797C, Notice of Action as it relates to the filing of the Form I-914.

A Form I-914, however, has no bearing in this matter as bond proceedings are separate and distinct from all other proceedings. 8 C.F.R. § 1003.19(d). The Obligor is not relieved of his responsibility to deliver the Bonded Alien at the time and place specified in the Form I-340 because a Form I-914 has been filed. A delivery bond is a contract between the ICE and the obligor, wherein consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract. Here, the Obligor did not produce the Bonded Alien after being properly served with a Form I-340.

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<sup>1</sup> The record reflects the Obligor and the Bonded Alien both resided at the address the Form I-340 was delivered to.

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#### IV. CONCLUSION

After a careful review of the record, we conclude 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 L-O-G-*, ID# 15792 (AAO May 18, 2016)