



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

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

MATTER OF G-M-

DATE: MAY 18, 2016

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT SAN FRANCISCO,
CALIFORNIA FIELD OFFICE 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 Francisco, California, declared the bond breached.

The matter is now before us on appeal. In the appeal, the Obligor submits additional evidence and asserts that the bond has not been breached as the Form I-340, Notice to Obligor to Deliver Alien, was improperly mailed to an old address. The Obligor states that a change of address notice was provided to the immigration court and U.S. Citizenship and Immigration Services (USCIS) on May 3, 2011. The Obligor adds that a petition for review is currently pending before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit), and a Form I-130, Petition for Alien Relative, has been filed with USCIS.

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;
- (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.

(b)(6)

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II. FACTS AND PROCEDURAL HISTORY

On a Form I-352, Immigration Bond, dated November 21, 2007, the Obligor posted a \$10,000 bond conditioned upon the delivery of the above referenced alien. A Form I-340 dated September 14, 2012, was sent to the Obligor via certified mail, but was returned by the U.S. Postal Service as undeliverable. A Form I-340 dated October 17, 2012, was then sent to the Obligor via regular mail. The Form I-340 demanded the Bonded Alien's surrender into the custody of ICE at 9:00 a.m. on [REDACTED] 2012, at [REDACTED] CA [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 December 3, 2012, was sent to the Obligor via certified mail. The Form I-323 was returned by the U.S. Postal Service as unclaimed. ICE subsequently resent the Form I-323 to the Obligor via regular mail on January 3, 2013. The Form I-323 informed the Obligor that the delivery bond had been breached on November 20, 2012.

III. ANALYSIS

As stated above, the Obligor is seeking reinstatement of a delivery bond. The Director determined 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.

On appeal the Obligor submits copies of the Bonded Alien's petition for review filed with the Ninth Circuit on August 30, 2012, an approval notice for a Form I-130 filed on behalf of the Bonded Alien, and a U.S. Department of Justice Form EOIR-33/1C, Alien's Change of Address Form/Immigration Court, received at the Executive Office for Immigration Review on May 3, 2011. The Obligor states even though a change address had been submitted, the Form I-340 was mailed to an old address and therefore the bond has not been breached.

We find the record establishes that the Form I-340 was properly served, and 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 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 September 14, 2012, and October 17, 2012, were mailed to the Obligor's address, [REDACTED] CA [REDACTED] via certified and regular mail, respectively. The Form I-340 dated September 14, 2012, was returned by the U.S. Postal Service as undeliverable.

We find no evidence in the record that the Form I-340 dated October 17, 2012, sent via regular mail, was returned to the ICE office as undeliverable.

On appeal, the Obligor states that even though a change of address notice was submitted to USCIS and the immigration court, the Form I-340 was mailed to an old address. However, the record reflects that the Bonded Alien advised USCIS and the immigration court of a change in his address, not in the Obligor's address. Furthermore, while the Obligor submits a copy of her Form G-325A, Biographic Information, filed with USCIS, the record does not contain evidence that the Obligor filed Form I-333, Obligor Change of Address, or any other written change of address notification, with ICE. We therefore find that ICE mailed the Form I-340 to the Obligor at her last known address, which is the address listed on the Form I-352, in compliance with 8 C.F.R. § 103.8(a)(2)(iv). The Obligor does not contest that she received the Form I-340 dated October 17, 2012.

The Obligor states that a petition for review is currently pending before the Ninth Circuit. However, service of a petition for review of an order of removal does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Act, 8 U.S.C. § 1252(b)(3)(B). Pursuant to General Order 6.4(c)(1) of the Ninth Circuit, upon the filing of a motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the court. The evidence of record does not reflect that a motion or request for stay of removal has been filed, or that the Ninth Circuit has stayed the Bonded Alien's removal. As such, the filing of the Petition for Review did not impact the Obligor's obligation to deliver the Bonded Alien when requested.

The Obligor, on appeal, also states that a Form I-130 was filed on behalf of the Bonded Alien, and a copy of the approval notice is in the record. A Form I-130, 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 filing of a Form I-130 does not relieve the Obligor of her responsibility to deliver the Bonded Alien at the time and place specified in the Form I-340. A delivery bond is a contract between the ICE and the obligor, where in 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.

We also find that the bond was substantially violated. The determination of whether a bond violation is substantial within the meaning of 8 C.F.R. § 103.6(e), 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.

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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 Obligor does not claim that the breach was accidental. The extent of the breach, however, was significant as the Obligor did not surrender the Bonded Alien to ICE as directed. We also find that the Obligor's actions were not committed in good faith, as the Obligor does not assert that she did not actually receive notice of the request to deliver the Bonded Alien. Lastly, the Bonded Alien did not take steps to put himself in compliance by reporting to ICE once the Obligor received the Form I-323 sent January 3, 2013. We therefore conclude that the Obligor substantially violated the terms of the immigration bond.

IV. CONCLUSION

After a careful review of the record, we conclude that the Form I-340 was properly served, 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 G-M-*, ID# 17066 (AAO May 18, 2016)