U.S. Department of Homeland Security
U.S. Citizenship & Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DEC. 5, 2019

FILE #:
I-290B RECEIPT #:
BOND RECEIPT #:
BOND BREACH RECEIPT #:

NOTICE OF DECISION

I-352 IMMIGRATION BOND OF ON BEHALF OF

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT DECISION

This is a non-precedent decision of the Administrative Appeals Office (AAO). If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision, reopen the proceeding, or both. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Form I-290B, Notice of Appeal or Motion, **within 33 calendar days of the date of this decision**. This time period includes three days added for service by mail.

The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

The Co-Obligor seeks to reinstate a delivery bond. *See* Immigration and Nationality Act (Act) section 103(a)(3), 8 U.S.C. § 1103(a)(3). An obligor posts an immigration bond as security for a bonded foreign national'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 Orlando, Florida ICE Field Office declared the bond breached, concluding that the Co-Obligor did not deliver the Foreign National to ICE upon written request.

On appeal, the Co-Obligor argues that the Notice to Appear (NTA) issued to the bonded Foreign National was invalid and that the issuance of said NTA both prevented the Co-Obligor from fulfilling the conditions of the bond and "negates" any substantial violation of the terms of the bond. The Co-Obligor requests reinstatement or rescission of the bond.

We will dismiss the appeal.

I. LAW

A delivery bond creates a contract between the United States government and an obligor. *Matter of Smith,* 16 I&N Dec. 146, 151 (Reg'l Comm'r 1977). An obligor secures his or her promise to deliver a foreign national by paying a designated amount in cash or its equivalent. *Id.* 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. § 106(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).

ICE must personally serve an obligor with notice demanding delivery of a foreign national. 8 C.F.R. § 103.8(c). Personal service may include mailing a notice by certified or registered mail, return receipt requested. 8 C.F.R. § 103.8(a)(2).

II. ANALYSIS

A. The Co-Obligor Received Notice of the Time and Place to Deliver the Foreign National

The first issue on appeal is whether the Co-Obligor received notice of when and where to deliver the Foreign National. The ICE Field Office determined that the Co-Obligor breached a delivery bond, as the Foreign National was not delivered upon request.

The regulation at 8 C.F.R. § 103.8(c) states that ICE must personally serve an obligor with notice demanding delivery of a foreign national. The regulation at 8 C.F.R. § 103.8(a)(2) states that personal service may consist of any of the following:

1. Delivery of a copy personally;
2. 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;
3. Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;
4. Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address; or
5. If so requested by a party, advising the party by electronic mail and posting the decision to the party's USCIS account.

The Co-Obligor contends that the initial Form I-862, Notice to Appear (NTA) which caused the bonded Foreign National to enter immigration proceedings did not include a time and place for the Foreign National to appear, and that therefore the Co-Obligor could not produce the Foreign National. "[T]he obligors were not made aware of any court date by the government, and as a result the government is responsible for the failure of the alien to appear in Court."

First, we note that bond proceedings are separate from other immigration proceedings. Removal proceedings are between the United States government and a foreign national, whereas bond proceedings concern a contract between an obligor and ICE. NTAs are issued to foreign nationals to provide notice of their immigration court proceedings. Because obligors are not a party to such proceedings, they do not receive NTAs. It is not apparent from the Co-Obligor's brief how the contents of the Foreign National's NTA affected the Co-Obligor's ability to produce the Foreign National upon written request.

On May 15, 2018, a representative of the Co-Obligor signed an ICE Form I-352, Immigration Bond, agreeing to produce the Foreign National upon each and every written request until the obligation terminates. On May 11, 2019, ICE sent a Form I-340, Notice to Deliver Alien, to the Co-Obligor's address of record via certified mail, return receipt requested. The record indicates that the delivery was signed for on May 16, 2019. The Form I-340 requested that the Co-Obligor produce the Foreign National on [redacted] 2019.

The evidence of record indicates that ICE correctly sent the notice to deliver the Foreign National via personal service, and the Co-Obligor received notice to deliver the Foreign National, including the pertinent time and location.

B. The Breach of the Bond's Terms was Substantial

The second issue on appeal is whether the Co-Obligor substantially violated the terms of the immigration bond.

In order to determine whether a bond violation is substantial, we consider the following factors:

- The extent of the violation;
- Whether the violation was accidental or intentional;
- Whether the violation was made in good faith; and
- Whether steps were taken to get in compliance with the bond.

See Kubacki at 44. In this instance, the Co-Obligor claims that pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), the Foreign National's NTA was invalid, and that this "severely prejudiced" the Co-Obligor's ability to deliver the bonded Foreign National. Second, the Co-Obligor claims that because of the alleged invalidity of the NTA, the Foreign National's removal proceedings never actually commenced, and thus the Co-Obligor "could not have possibly produced the [Foreign National]." Third, the Co-Obligor argues that the issuance of an invalid NTA "negates any 'substantial violation' contemplated by 8 C.F.R. Sec. 103.6(e)."

Before addressing these arguments, we note that the Supreme Court's holding in *Pereira* is limited to the narrow issue of whether the "stop-time" rule can be triggered by an NTA that omits the time and place of the initial hearing. *See Santos-Santos v. Barr*, 917 F.3d 486, 489 (6th Cir. 2019); *Karingithi v. Whitaker*, 913 F.3d 1158, 1161 (9th Cir. 2019). ICE Form I-340 is distinguishable from a "notice to appear" under section 239(a) of the Act, and the Court in *Pereira* did not address any notice requirements with respect to ICE Form I-340 or bond proceedings. An ICE Form I-340 is a "Notice to Obligor to Deliver Alien" to ICE for several possible reasons, and not a notice to a foreign national to appear at an immigration court for proceedings. Therefore, we do not find the holdings of *Pereira* applicable to the current case. However, in the interest of completeness, we will address the Co-Obligor's remaining arguments regarding the substantiality of the bond violation.

With respect to the first aforementioned argument, the Co-Obligor contends that the NTA which initiated proceedings did not include a time and place for the Foreign National to appear, and that this omission somehow prejudiced the Co-Obligor in carrying out the responsibilities of the bond. However, as noted above, the NTA is not intended as notice for an obligor in bond proceedings. The record indicates that ICE properly issued notice to the Co-Obligor via ICE Form I-340, requesting that the Co-Obligor deliver

the bonded Foreign National at a specified time and location. The Co-Obligor does not provide a rationale as to how the content of an NTA could affect their ability to deliver the bonded Foreign National upon request. As such, we are unpersuaded by this argument.

With respect to the second argument, the Co-Obligor contends that the NTA was not properly issued, and as a consequence, the bonded Foreign National was never actually placed in removal proceedings. However, the AAO does not have appellate jurisdiction over the decisions of Immigration Judges in removal or exclusion proceedings. This authority is vested in the Board of Immigration Appeals (BIA). 8 C.F.R. § 1003.1(b)(1), (3). The BIA's jurisdiction also includes decisions regarding the issuance of immigration bonds. 8 C.F.R. § 1003.1(b)(7). As such, the validity of the NTA which initiated immigration proceedings is beyond the scope of the AAO's jurisdiction, and the AAO will not exercise appellate authority over this matter.

Finally, regarding the Co-Obligor's third argument, the Co-Obligor contends that "the government's failure caused the initial violation of the terms of the bond" and that the issuance of an invalid NTA "negates any 'substantial violation' contemplated by 8 C.F.R. Sec. 103.6(e)." However, the content of an NTA is not mentioned in the terms or conditions of the ICE Form I-352, which the Co-Obligor signed and agreed to. It is therefore not apparent how the content of an NTA could violate the bond's terms.

The record indicates that a violation of the terms of the bond occurred when the Co-Obligor failed to deliver the bonded Foreign National upon written request. By failing to deliver the Foreign National upon request, the Co-Obligor violated the main condition of the bond. There is no indication that this violation was accidental or made in good faith, or that the Co-Obligor has attempted to comply with the terms of the bond. Therefore, we find that the violation of the bond's terms is substantial.

III. CONCLUSION

The Co-Obligor substantially violated the conditions of the bond and the bond has been breached. The Co-Obligor is not entitled to reinstatement of the bond.

ORDER: The appeal is dismissed.

Cite as *Matter of S-B- Inc*, ID# 07164561 (AAO Dec. 5, 2019)

Barbara Q. Velarde
Chief, Administrative Appeals Office