

U.S. Department of Homeland Security
U.S. Citizenship & Immigration Services
Administrative Appeals Office
5900 Capital Gateway Drive, Mail Stop 2090
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**U.S. Citizenship
and Immigration
Services**

AUGUST 27, 2021

FILE #:

BOND RECEIPT #:

BOND BREACH RECEIPT #:

I-290B RECEIPT #:

NOTICE OF DECISION

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT DECISION

This is a non-precedent decision of the Administrative Appeals Office (AAO). All documents have been returned to the office that originally decided this case. Please direct any further inquiries to that office.

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 San Antonio, Texas ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the Noncitizen to ICE upon written request.

On appeal, the Obligor asserts that the Bonded Noncitizen departed the United States prior to the requested report date. The Obligor requests reinstatement and cancellation of the bond.

We will sustain the appeal.

I. LAW

A delivery bond creates a contract between the United States 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 noncitizen 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. § 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); *see also Aguilar v. United States*, 124 Fed. Cl. 9, 16 (2015).

II. ANALYSIS

The issue on appeal is whether the Obligor is entitled to bond reinstatement. The ICE Field Office determined that the Obligor breached a delivery bond, as the foreign national was not delivered upon request.

The record shows that the notice to deliver was sent to the Obligor's address via certified mail. On appeal, the Obligor does not contest receiving the notice to deliver the foreign national. Instead, the Obligor contends that there was no breach because the bond was cancelled prior to the foreign national's scheduled appearance date on [REDACTED] 2020.

ICE Form I-352, Immigration Bond, states that an obligor must continue to produce the bonded foreign national upon each and every written request until the obligation terminates. The terms and conditions of the bond state that the bond will be automatically cancelled if any of the following events occur before a breach:

- The Department of Homeland Security takes the foreign national back into its custody;
- The foreign national is deported/excluded/removed;
- The foreign national is granted permanent residence;
- The foreign national is detained for 30 days or more pursuant or prior to a conviction by local, state, or federal authorities;
- The foreign national's deportation/removal proceedings are finally terminated;
- The foreign national dies; or
- The foreign national departs the United States.

In this instance, the Obligor states that the Bonded Noncitizen departed the United States prior to ICE's required report date. According to the Obligor, the Noncitizen's flight to El Salvador was cancelled due to COVID-19 travel restrictions, but she still departed the United States by bus prior to her [REDACTED] 2020 voluntary departure deadline and prior to the [REDACTED] 2020 ICE delivery date. To support this claim, the Obligor provided several forms of evidence, including:

- Obligor's affidavit;
- Noncitizen's grant of voluntary departure by the Executive Office of Immigration Review (EOIR);
- Email from airline;
- Bus tickets;
- Noncitizen's Salvadoran passport;
- Noncitizen's Salvadoran identification document; and
- A document from the Guatemalan Institute of Migration.

The EOIR documents indicate that the Noncitizen was granted until [redacted] 2020 to depart the United States. The email from [redacted] Airlines indicates that the Noncitizen's May 31, 2020 flight was cancelled, though it does not indicate the origin or destination of that flight. The bus tickets are for a multi-part trip from [redacted] Texas to [redacted], Mexico starting on August 31, 2020. The document from the Guatemalan Institute of Migration indicates that the Noncitizen presented herself in Guatemala on September 3, 2020. The Salvadoran identification document and passport indicate that they were issued in [redacted] El Salvador on October 2 and October 5, 2020, respectively.

The totality of the evidence indicates that the Noncitizen departed the United States prior to the requested report date. We find that the Obligor performed the terms of the bond and the bond was automatically cancelled prior to the date of the breach. Therefore, there was no bond breach.

III. CONCLUSION

Because the Obligor substantially performed the terms of the bond, we find that the Obligor did not breach the bond.

ORDER: The appeal is sustained.



Susan Dibbins
Chief, Administrative Appeals Office