

U.S. Department of Homeland Security
U.S. Citizenship & Immigration Services
Administrative Appeals Office
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U.S. Citizenship
and Immigration
Services

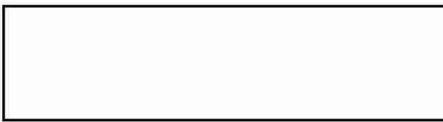
MAY 27, 2021

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 cancel 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 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 New York, New York ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the Foreign National to ICE upon written request.

On appeal, the Obligor asserts that they did not deliver the Foreign National because the Foreign National had already departed the United States. The Obligor requests 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 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. § 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).

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

The issue on appeal is whether the Obligor is entitled to bond cancellation. The ICE Field Office determined that the Obligor breached a delivery bond, as the Foreign National was not delivered upon request. The Obligor states that the bond should be cancelled, because the Foreign National departed the United States prior to the requested delivery date.

A. The Obligor Did Not Receive Notice to Deliver the Foreign National

The record shows that the ICE Form I-340, Notice to Obligor to Deliver Alien, was sent to the Obligor's address via certified mail, return receipt requested, on February 28, 2014. However, there is no indication in the record that this notice was ever delivered. Instead, ICE records indicate that on April 24, 2014, they received the certified mail receipt back unsigned, indicating that the delivery was never claimed. We find that ICE did not take additional reasonable steps to ensure that the Obligor received notice to deliver the Foreign National, so the bond has not been breached.

By sending the Form I-340 to the Obligor's address of record via certified mail, ICE followed the bond's conditions and regulatory requirements. *See* 8 C.F.R. § 103.8. However, due process requires that once ICE learned that the certified mailing was unclaimed, they had to take additional reasonable steps to notify the Obligor. *See Echavarria v. Pitts*, 641 F.3d 92, 95 (5th Cir. 2011) (applying *Jones v. Flowers*, 547 U.S. 220, 234 (2006) to immigration bond proceedings). Despite the lack of certified mail delivery confirmation, there is no indication that ICE took any additional steps to notify the Obligor of the required delivery date.

ICE's Bond Management Handbook (Handbook) states that in instances where ICE knows a Form I-340 was not received by an obligor, it is ICE practice to resend the notice. *See* U.S. Department of Homeland Security, *Enforcement and Removal Operations Bond Management Handbook*, 49 (Aug. 19, 2014). While the Handbook does not create any legal rights or benefits, in this instance it does establish that ICE has procedures in place for instances when Forms I-340 aren't delivered. Presumably, ICE considers these procedures to be reasonable additional steps to take to notify the Obligor of the delivery date. However, in this instance, there is no indication that the Form I-340 was resent. Therefore, we find that ICE did not provide the Obligor with sufficient notice to deliver the Foreign National, and so there was no bond violation.

B. The Obligor Substantially Performed the Terms of the Bond

The Obligor contends that there was no breach because the bond's conditions were performed prior to the Foreign National's scheduled appearance date on [] 2014.

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 Foreign National departed the United States on February 15, 2012. In support of this claim, the Obligor provides an ICE Form I-392, Notification of Departure of Alien (Bonded), signed by an official of the U.S. Consulate in Shenyang, China.

It is acknowledged that ICE Form I-352 states that the voluntary departure of a bonded alien should be "evidenced by valid proof thereof," and in this instance, the ICE Form I-392 was not signed until April 24, 2014, which is after the requested delivery date. In the appeal, the Obligor states that this delay occurred because the Foreign National could not get an appointment at the U.S. Consulate until the Obligor received notice of the bond breach.

Applying the *Kubacki* factors, we find that the Obligor took steps to perform the terms of the bond, and that the violation was both accidental and made in good faith, since the Obligor never received notice of the delivery date. The extent of that violation - the failure to provide evidence of the Foreign National's departure prior to the delivery date - was minimal, and was at least partially due to factors beyond the Obligor's control. Therefore, we find that the Obligor substantially performed the terms of the bond.

We find that the bond's terms were substantially performed prior to the date of the breach. Therefore, for this additional reason, there was no bond breach.

III. CONCLUSION

Because ICE did not properly notify the Obligor to deliver the Foreign National and because the Obligor substantially performed the terms of the bond prior to the delivery date, we find that the Obligor did not breach the terms of the bond.

ORDER: The appeal is sustained.



Susan Dibbins
Chief, Administrative Appeals Office