



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

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

MATTER OF C-Y-

DATE: JUNE 22, 2018

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT LAS VEGAS, NEVADA
FIELD OFFICE DECISION

FORM: ICE FORM I-352, IMMIGRATION BOND

The Obligor, an individual, seeks to reinstate a delivery bond. Immigration and Nationality Act section 103, 8 U.S.C. § 1103. An obligor posts an immigration bond as security for a foreign national'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.

The Director of the ICE Las Vegas, Nevada, Field Office declared the bond breached, concluding that the Obligor substantially violated the terms of the delivery bond by failing to deliver the Foreign National to the ICE Las Vegas, Nevada, Field Office upon written request.

On appeal, the Obligor submits additional evidence and asserts that, although he received ICE's written request to deliver the Foreign National for removal, he did not receive a prior notice to deliver the Foreign National for a court appearance.

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

I. LAW

A delivery bond is a contract between an obligor and the Department of Homeland Security. In exchange for a foreign national's temporary release from ICE custody, an obligor posts a delivery bond as security for the foreign national's return before an Immigration Judge or immigration officer upon each written request until the foreign national is removed from or departs the United States, or until the termination of the foreign national's exclusion or removal proceedings. An obligor's substantial performance of a bond's conditions cancels the bond and releases the obligor from liability. 8 C.F.R. § 103.6(c)(3). In contrast, an obligor's substantial violation of a bond's conditions creates a claim in favor of the United States on the bond amount. 8 C.F.R. § 103.6(e).

Whether a violation of a delivery bond's conditions is substantial depends on circumstances including:

1. The number of days the foreign national remained in the United States before either returning to ICE custody on a requested appearance date or departing the United States;

2. Whether the foreign national intentionally did not either return to ICE custody upon request or depart the United States;
3. Whether the foreign national's overstay in the United States was in good faith; and
4. Whether the foreign national attempted to comply with ICE's notice to appear.

See *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)).

II. ANALYSIS

The record indicates that, on [REDACTED] 2017, an Immigration Judge ordered the Foreign National removed from the United States *in absentia*. On [REDACTED] 2017, the ICE Las Vegas, Nevada, Field Office sent an ICE Form I-340, Notice to Obligor to Deliver Alien, to the Obligor's address of record. U.S. Postal Service tracking information for the shipment confirms the notice to deliver was delivered and the Obligor admits he received it. On [REDACTED] 2018, the ICE Las Vegas, Nevada, Field Office declared the bond breached because the Obligor did not deliver the Foreign National to ICE on [REDACTED] 2017, upon request. The record does not indicate that the Obligor has delivered the Foreign National to ICE or that the Foreign National has departed the United States.

The Obligor asserts that he did not deliver the Foreign National upon request because he had not received a prior notice to deliver the Foreign National to appear before the Immigration Judge on [REDACTED] 2017.

Whether a foreign national in removal proceedings or an obligor received a notice for the foreign national to appear before an Immigration Judge is beyond the scope of our appellate review of ICE's bond breach determination. See 8 C.F.R. § 1003.1(b)(3) ("Appeals may be filed with the Board of Immigration Appeals from . . . [d]ecisions of Immigration Judges in removal proceedings . . ."). Regardless of the circumstances of the [REDACTED] hearing, the Immigration Judge's order to remove the Foreign National from the United States is separate from ICE's request for the Obligor to deliver the Foreign National to execute the Immigration Judge's removal order. The record does not indicate that the Foreign National has filed an appeal with the Board of Immigration Appeals from the Immigration Judge's order to remove him *in absentia*.

The record indicates that the Obligor received written notice to deliver the Foreign National but, rather than attempting to comply with ICE's notice to appear, the Foreign National intentionally overstayed in the United States for more than 150 days. Although the Foreign National and Obligor may disagree with the Immigration Judge's underlying order to remove the Foreign National *in absentia*, their noncompliance with ICE's separate notice to appear is not in good faith. Therefore, ICE correctly concluded that the Obligor substantially violated the terms of the delivery bond.

Matter of C-Y-.

III. CONCLUSION

The Obligor substantially violated the terms of the delivery bond by failing to deliver the Foreign National to ICE upon written request.

ORDER: The appeal is dismissed.

Cite as *Matter of C-Y-*, ID# 1591184 (AAO June 22, 2018)