



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

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

MATTER OF L-F-O-C-J-P-, PLLC

DATE: JUNE 22, 2018

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT NEW YORK, NEW YORK FIELD OFFICE DECISION

FORM: ICE FORM I-352, IMMIGRATION BOND

The Obligor, a law firm, 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 New York, New York, Field Office declared the bond breached, concluding that the Obligor substantially violated the terms of the bond by failing to deliver the Foreign National to the ICE New York, New York, Field Office upon written request.

On appeal, the Obligor submits additional evidence and asserts that several ICE offices miscommunicated the appropriate manner in which to mitigate the breach.

Upon *de novo* review, we will sustain 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 Obligor does not dispute that it did not deliver the Foreign National to the ICE New York, New York, Field Office upon written request. However, the Obligor provides documentary evidence of its attempt to mitigate the bond breach by delivering the Foreign National to an ICE office closer to the Foreign National's residence in [REDACTED] California.

On [REDACTED] 2017, the Director of the ICE New York, New York, Field Office, through a deportation officer, sent the Obligor an ICE Form I-340, Notice to Obligor to Deliver Foreign National, requesting the Obligor to deliver the Foreign National to the ICE New York, New York, Field Office on [REDACTED] 2017. Beginning not later than 8:26 a.m., local time, on [REDACTED] a partner of the Obligor firm contacted the ICE Los Angeles, California, Field Office Outreach Team, explaining that an officer in the ICE New York, New York, Field Office instructed her to deliver the Foreign National to the ICE Los Angeles, California Field Office. The partner of the Obligor firm notified the ICE Los Angeles, California, Field Office Outreach Team that the Foreign National would arrange for his own voluntary departure from the United States through [REDACTED] California, and requested to reschedule the removal date "any day between [REDACTED] and [REDACTED] to allow the Foreign National to make the appropriate arrangements.

In response to the Obligor's request for a removal date during the week following the requested delivery date, the ICE Los Angeles, California, Field Office Outreach Team informed the Obligor that "the [REDACTED] ICE office falls under the [REDACTED] area of responsibility so please contact them if [the Foreign National] can report there instead." Additionally, on [REDACTED] 2018, the ICE New York, New York, Field Office deportation officer who sent the ICE Form I-340 to the Obligor informed the Obligor that it "may appeal/mitigate the bond breach if [the Foreign National] reports to an [ICE Enforcement and Removal Operations] office within 30 days," without specifying a particular location.

The Obligor states that a partner of the Obligor firm traveled from [REDACTED] Texas, to [REDACTED] California, to accompany the Foreign National in person during his appearance at the ICE San Francisco, California, Field Office on [REDACTED] 2017, along with a ticket to depart the United States. The Obligor states that the ICE San Francisco, California, Field Office would not accept the Foreign National's attempt to mitigate the bond breach, despite the ICE New York, New York, Field Office's instructions of the deportation officer who sent the ICE Form I-340 to the Obligor and despite the ICE Los Angeles, California, Field Office Outreach Team's instructions.

The Foreign National then returned to [REDACTED] California, and appeared at the ICE Bakersfield, California, Field Office on [REDACTED] 2017, and enrolled in the ICE Intensive Supervision Appearance Program (ISAP).

When reviewing the record in light of the *Kubacki* factors, we note that the Foreign National remained outside of ICE custody for 20 days, similar to the period during which the foreign national in that case overstayed before voluntarily departing the United States. *Kubacki*, 18 I&N Dec. at 44. Throughout the entire 20-day overstay period, the Foreign National, on his own volition and through the Obligor, demonstrated his intent to return to ICE custody and attempted to follow the instructions of several ICE offices. However, the ICE San Francisco, California, Field Office apparently was unable or unwilling to accept the Foreign National's mitigation attempt. The Foreign National's 20-day overstay before enrolling in the ICE ISAP was in good faith, specifically because the ICE New York, New York, Field Office deportation officer who sent the ICE Form I-340, stated that the Obligor "may appeal/mitigate the bond breach if [the Foreign National] reports to an [ICE Enforcement and Removal Operations] office within 30 days," without specifying a particular location. The record reflects that both the Obligor, located in [REDACTED] Texas, and the Foreign National, located in [REDACTED] California, reasonably attempted to comply with the notice to appear in [REDACTED] New York, by communicating with several ICE field offices, proposing voluntary departure during the week following the requested deliver date, and appearing at two ICE field offices. Therefore, the record supports the conclusion that the Obligor did not substantially violate the terms of the delivery bond. *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)); *see also* 8 C.F.R. § 103.6(c)(3)

III. CONCLUSION

The Obligor did not substantially violate the terms of the delivery bond.

ORDER: The appeal is sustained.

Cite as *Matter of L-F-O-C-J-P-, PLLC*, ID# 1544599 (AAO June 22, 2018)