U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
Washington, DC 20529

U.S. Citizenship and Immigration Services

OCT. 17, 2018

[redacted]

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NOTICE OF DECISION

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 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 ICE Washington Field Office declared the bond breached concluding that Obligor and Co-Obligor substantially violated the bond's conditions by failing to deliver the Foreign National to the ICE Washington Field Office on [redacted] 2018, upon written request.

On appeal, the Co-Obligor submits a brief and asserts that the notice to deliver the Foreign National was deficient because it did not contain a "Questionnaire and Worksheet."

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 Co-Obligor does not contest the Director's conclusion that the Obligor and Co Obligor did not deliver the Foreign National to the ICE Washington Field Office on [redacted] 2018, upon written request. Instead, the Co Obligor asserts that the ICE Form I-340, Notice to Obligor to Deliver Alien, sent to the Obligor and Co Obligor was deficient because it did not include a "Questionnaire and Worksheet" created pursuant to the *Amwest v. Reno*, C.D. Cal., No. 93-3256 JSL(SHx), settlement agreement (*Amwest* settlement agreement). We disagree.

A. Non-Parties to the Amwest Settlement Agreement are Not Entitled to a "Questionnaire and Worksheet"

The Co-Obligor asserts that "Enforcement and Removal Operations Bond Management Handbook, Document Number 16051730, Appendices 12, [p]age 11, and 13 page 45," requires ICE to include a "Questionnaire and Worksheet" when serving an obligor with ICE Form I 340. Appendix 13 provides general guidance for ICE employees for completing and sending ICE Form I 340. U.S. Department of Homeland Security, *Enforcement and Removal Operations Bond Management Handbook*, 1, 44. ICE's policy of sending a "Questionnaire and Worksheet," to which the Co Obligor refers, specifically is only implicated "for bonds posted by G&G [Gonzales & Gonzales Immigration Bonds] when it serves as the agent for American Surety Company" or the related sureties, Amwest Surety and FarWest Surety. *Id.* at 45, 52. This policy applies only to the parties to the *Amwest* settlement agreement.

The Bond Management Handbook expressly does not create a right that an obligor may use as a defense to a bond breach determination:

> The procedures detailed in this Handbook are intended for the internal management of ICE and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against ICE or any agency of the Federal Government. Any failure of ICE to comply with any provisions in this document shall not be available to any person or entity as a defense, except as otherwise required by law.

U.S. Department of Homeland Security, *Enforcement and Removal Operations Bond Management Handbook*, 1 (Aug. 19, 2014). The Bond Management Handbook clarifies that, instead of creating rights, it "provides general guidance on immigration bonds" for ICE employees' reference. *Id.* The Co-Obligor does not identify a law that it believes overcomes the express language of the Bond Management Handbook that prevents the Co Obligor from relying on the Handbook's general, internal guidance as a defense to a bond breach determination.

The Co Obligor is neither Gonzales & Gonzales Immigration Bonds nor serving as the agent for American Surety Company, Amwest Surety, or FarWest Surety for the disputed bond breach determination. Therefore, even if the Bond Management Handbook created a right upon which the Co Obligor may rely as a defense, which it does not, the provision the Co-Obligor references does not apply to it. *Id.* at 1, 45, 52.

Moreover, even if the Amwest settlement agreement and ICE's implementing policy applied to the Co-Obligor, which it does not, a District Court observed that ICE's failure to send a "Questionnaire and Worksheet" does not necessarily render a bond breach determination void:

> Even if the Court were to conclude that the Agency had a policy of extending the provisions of the Amwest I Settlement to all sureties as a matter of policy and fairness, the text of the Amwest I Settlement does not make clear that failure to send a questionnaire with a demand to produce the alien necessarily renders a bond breach unenforceable.

U.S. v. Gonzales & Gonzales Bonding & Ins. Agency, 711 F. Supp. 2d 697, 727 (S.D. Tex. March 24, 2008). We agree. For the foregoing reasons, we are unpersuaded by the Co-Obligor's assertion.

On appeal, the Obligor asserts that ICE issued its Form I-340 more than 30 days after the Foreign National's removal order, and in doing so, ICE violated its *Bond Management Handbook*, which instructs ICE officers to send the form within 30 days of the date of the final order of removal. However, the *Bond Management Handbook* is not authoritative in these proceedings, nor does it create any right or benefit. Further, neither the Act nor the governing regulations require ICE to issue the Form I-340 within 30 days of a final removal order.

B. The Co-Obligor Substantially Violated the Delivery Bond's Conditions

The Co-Obligor does not contest the Director's conclusion that the Obligor and Co-Obligor did not deliver the Foreign National to the ICE Washington Field Office on [redacted] 2018, upon written request. Because the Co-Obligor has not demonstrated that the Obligor and Co Obligor otherwise substantially performed the bond's conditions, we conclude that the Obligor and Co-Obligor substantially violated the bond's conditions when they did not deliver the Foreign National as requested. 8 C.F.R. § 103.6(e); *see also 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)).

III. CONCLUSION

The Enforcement and Removal Operations Bond Management Handbook does not create rights that obligors may raise as defenses to bond breach determinations. Non-parties to the *Amwest* settlement agreement are not entitled to receive a "Questionnaire and Worksheet" with ICE Form I-340. The Co-Obligor substantially violated the delivery bond's conditions when it did not deliver the Foreign National in accordance with the Director's written request.

ORDER: The appeal is dismissed.

CITE AS: *Matter of A-to Z- B- B-*, ID# 1843204 (AAO Oct. 17, 2018)

Barbara Q. Velarde
Chief, Administrative Appeals Office