



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

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

In Re: 33767153

Date: SEP. 16, 2024

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Obligor seeks to reinstate a voluntary departure 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 Chicago, Illinois, ICE Field Office declared the bond breached; however, the Obligor asserts that the Bonded Noncitizen's "case is currently under appeal with the BIA therefore the voluntary departure date has not tolled out until the BIA enters and serves a final decision."

In these proceedings, it is the Obligor's burden to establish substantial performance of a bond's conditions. *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 129 (BIA 1984). Upon de novo review, we will dismiss the appeal.

A voluntary departure bond creates a contract between the U.S. Government and an obligor. *See United States v. Minn. Tr. Co.*, 59 F.3d 87, 90 (8th Cir. 1995); *see also Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. at 125. An obligor secures its promise that a noncitizen will voluntarily depart the United States or return to ICE custody not later than the date set by an Immigration Judge (IJ) by paying a designated amount in cash or its equivalent. *See* 8 C.F.R. § 103.6(c)(2), (d); *see also* 8 C.F.R. § 1240.26. 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) (citing *Int'l Fidelity Ins. Co. v. Crosland*, 490 F. Supp. 446 (S.D.N.Y. 1980)); *see also Aguilar v. United States*, 124 Fed. Cl. 9, 16 (2015).

The record contains a copy of a voluntary departure bond the Obligor executed, on behalf of himself as the Bonded Noncitizen, with ICE on [REDACTED] 2019, upon an IJ's order granting the Bonded Noncitizen voluntary departure on or before December 2, 2019. In the interim, the Bonded Noncitizen appealed the IJ's order. The record also contains a copy of a Board of Immigration Appeals (the Board) decision, dated May 23, 2023, dismissing the Bonded Noncitizen's appeal, and ordering the

Bonded Noncitizen to voluntarily depart the United States within 60 days following that date. Department of Homeland Security records indicate that there has been no further activity in the Bonded Noncitizen's removal proceedings after the Board dismissed the appeal on May 23, 2023. Moreover, the record does not establish that the Obligor has complied or attempted to comply with the voluntary departure order.

On March 5, 2024, the Chicago, Illinois, ICE Field Office sent the Obligor an ICE Form I-323, Notice – Immigration Bond Breached, notifying the Obligor that he violated the terms of the voluntary departure bond when the Bonded Noncitizen failed to submit evidence that he departed the United States “on or before July 21, 2023.” We note, however, that 60 days after the Board's decision dated May 23, 2023, was July 22, 2023. Because the Board dismissed the Bonded Noncitizen's appeal on May 23, 2023, his removal proceedings were not “currently under appeal with the BIA,” as he incorrectly stated when he filed the Form I-290B, Notice of Appeal or Motion, in May 2024. We further note that the Obligor incorrectly asserts on appeal that ICE declared the voluntary departure breached on March 5, 2023. The Obligor's multiple, material incorrect statements reduce his credibility. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record does not establish how the Bonded Noncitizen's ongoing overstay beyond July 22, 2023, following the Board's dismissal of his appeal, may have been accidental or in good faith, or how the Bonded Noncitizen may have taken steps to comply with the voluntary departure order—whether on or before July 22, 2023, or at any point thereafter. *See Matter of Kubacki*, 18 I&N Dec. at 44. Therefore, the violation appears to be substantial. *See id.*; *see also* 8 C.F.R. § 103.6(e). Because the Obligor substantially violated the terms of the voluntary departure bond, we will dismiss the appeal. *See id.*

ORDER: The appeal is dismissed.