



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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San Diego, CA 92108**

**DHS/ICE Office of Chief Counsel - OTM
880 Front St, Room 2246
San Diego, CA 92101**

Name: L [REDACTED] V [REDACTED], [REDACTED] A [REDACTED] A [REDACTED] 848

Date of this notice: 2/15/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Snow, Thomas G
Kelly, Edward F.
Adkins-Blanch, Charles K.

Userteam: Docket

[Handwritten signature]

Falls Church, Virginia 22041

File: [REDACTED] 848 – San Diego, CA

Date: **FEB 15 2018**

In re: C [REDACTED] A [REDACTED] L [REDACTED] V [REDACTED] a.k.a. [REDACTED]
[REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Cesar Luna, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated September 8, 2017. The Immigration Judge found that the respondent presented a danger to the community and ordered him held on a "no bond" condition pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). The Department of Homeland Security has not responded to the appeal, which will be sustained, and the record will be remanded to the Immigration Judge.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien in a custody determination under section 236(a) of the Act must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999); *see also Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018). An alien who presents a danger to persons or property should not be released during the pendency of proceedings to remove him or her from the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

The record establishes that the respondent was convicted in 2002 of two counts of harassing his ex-wife and one count of making terroristic threats against his ex-wife (IJ at 2). The respondent was sentenced to six months' probation for each of the harassment offenses and six days in jail for the threatening offense (IJ at 2). While we share the Immigration Judge's concern regarding the respondent's criminal record, we disagree with the Immigration Judge that this record evidences dangerousness at this time. In particular, the respondent's criminal convictions occurred over 15 years ago and there is no evidence that the respondent has been arrested or charged with any crime since his 2002 convictions. Given that there is no evidence that the respondent has committed any crime, whether dangerous or not, in over 15 years, we cannot agree that the respondent is a danger to the community at this time. Accordingly, we reverse the Immigration Judge's determination that the respondent poses a danger to the community.

The Immigration Judge noted the equities present in these proceedings, including the respondent's United States citizen spouse and children, as well as his lengthy residence and strong community ties in the United States (IJ at 3). However, because the Immigration Judge determined that the respondent posed a danger to the community, he did not reach whether the respondent was a flight risk. We will remand for the Immigration Judge to make a determination regarding flight risk in the first instance. *See Matter of Adeniji; Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). The following orders will be entered.

ORDER: The appeal is sustained and the Immigration Judge's September 8, 2017, bond order is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this decision.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
7488 Calzada de la Fuente
San Diego, CA 92154**

File No.: [REDACTED] 848

Date: November 2, 2017

In the Matter of

IN BOND PROCEEDINGS

C [REDACTED] L [REDACTED] V [REDACTED]

Respondent.

**ON BEHALF OF
THE RESPONDENT:**

**ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:**

Cesar Luna, Esquire
2615 Camino del Rio South, Suite 400
San Diego, California 92108

Counsel for the DHS
7488 Calzada de la Fuente
San Diego, California 92154

BOND MEMORANDUM OF THE IMMIGRATION JUDGE

I. Procedural History

On August 22, 2017, the Department of Homeland Security ("DHS") detained C [REDACTED] L [REDACTED] V [REDACTED] ("Respondent") pursuant to its authority under section 236 of the Immigration and Nationality Act ("INA") and determined that he was not to be released on bond. *See* Notice of Custody Determination Aug. 22, 2017). Respondent thereafter sought redetermination of his custody status, and on September 8, 2017, the Court held a custody redetermination hearing. *See* Documents in Support of Bond Redetermination (Sept. 7, 2017) [hereinafter "Motion"]; *see also* Order of the Immigration Judge with Respect to Custody (Sept. 7, 2017) [hereinafter "Bond Order"]. During the hearing, the Court determined that Respondent failed to meet his burden to show that he was not a danger to the community. Accordingly, the Court denied his request for a change in custody status. *See* Bond Order. On September 15, 2017, Respondent appealed the Court's custody redetermination decision to the Board of Immigration Appeals ("BIA"). The Court provides the present Memorandum to facilitate review of Respondent's appeal. *See* Immigr. Ct. Prac. Man., Chap. 9.3(e)(vii) (June 27, 2017).

II. Statement of Law and Analysis

The Court is authorized to detain, release, or set bond for an alien pursuant to section 236 of the INA. 8 C.F.R. § 1236.1(d) (2017). An alien may request a bond redetermination hearing before the Court at any time before the issuance of an administratively final order of removal. *Id.* Section 236(a) of the INA governs the detention of aliens who are not subject to any mandatory detention provisions. An alien requesting release a bond bears the burden of proving that he does

not pose a danger to the community and is not a flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

An Immigration Judge may look to a number of factors in determining whether an alien merits release from custody, as well as the amount of bond that is appropriate. *Id.* These factors may include any or all of the following:

(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

Id.; see also *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (noting that a court should consider the extensiveness, recency, and seriousness of criminal activity when determining dangerousness). The BIA has made clear that the Court "has extremely broad discretion in deciding whether or not to release an alien on bond." *Guerra*, 24 I&N Dec. at 39. Any evidence in the record that is probative and specific can be considered. *Id.* at 40-41. Additionally, the Court "may choose to give greater weight to one factor over others, as long as the decision is reasonable." *Id.* at 40. "An Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community." *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

At Respondent's bond redetermination hearing, the Court considered the evidence and arguments presented by the parties. See *Guerra*, 24 I&N Dec. at 40. In support of Respondent's continued detention, DHS submitted a Form I-213, Record of Deportable/Inadmissible Alien ("Form I-213"), and state criminal court documents. See Form I-213 (Aug. 22, 2017); Criminal Record. These documents indicated that Respondent was arrested on September 24, 2002, in Hawaii for harassing his ex-wife by either striking, kicking, shoving, or otherwise physically touching her. See Criminal Record (Case No. 02-1-2498). Respondent pleaded guilty to this offense and received a sentence of six months' probation. See *id.* In addition, on December 2, 2002, Respondent was arrested for harassing his ex-wife by striking, kicking, shoving, or otherwise physically touching her, and for terrorizing her by threatening to cause her bodily injury. See Criminal Record (Case No. 02-1-2911). Respondent pleaded guilty to these crimes and was sentenced to six months of probation for the harassment charge and six days in jail for the terrorizing charge. See *id.*

In support of his release from custody, Respondent submitted the following documents: his birth certificate, a marriage certificate, documents of support from his U.S. citizen spouse and children, his spouse's medical records indicating that she suffers from major depressive disorder, documents from his sponsor, and letters of support. See Motion, Tabs 1-3. The evidence of record also stated that Respondent last entered the United States on May 10, 2007. See Exh. 1.

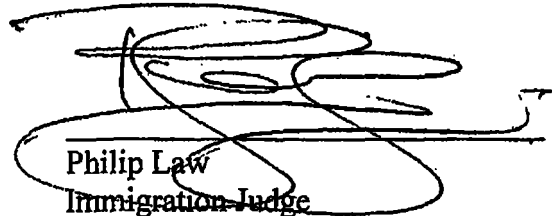
After hearing the parties' arguments and considering the evidence presented, the Court weighed the positive and negative factors in Respondent's case. *See Guerra*, 24 I&N Dec. at 40. The positive factors the Court considered were Respondent's strong ties to the community, length of time in the United States, the number of family members he has living in the United States, and the number of relatives he has living in the United States that possess legal status. *See id.*

The Court also considered the negative factors in Respondent's case, which primarily consisted of Respondent's criminal history. The Court noted that Respondent was convicted on more than one occasion of physically harming his ex-wife by shoving, striking, or otherwise hurting her, and threatening her with bodily injury. *See Criminal Records*. While the Court acknowledged that years had passed since these crimes were committed, it found that the violent nature of these offenses rendered Respondent a danger to the community. *See Urena*, 25 I&N Dec. at 141; *see also Hernandez v. Ashcroft*, 345 F.3d 824, 836-37 (9th Cir. 2003) (outlining the dangerous cycle of domestic abuse).

Therefore, upon weighing the positive and negative factors in this case, the Court found that Respondent did not meet his burden to show by a preponderance of the evidence that he was not a danger to the community.¹ *See Urena*, 25 I&N Dec. at 141. Accordingly, the Court denied Respondent's request for bond.

SO ORDERED.

Dated: November 2, 2017



Philip Law
Immigration Judge

cc: Mr. Luna, for Respondent.
DHS Counsel.

¹ Because Respondent was found to be a danger to the community, and thus ineligible to be released on bond, the Court did not reach the issue of whether he was a flight risk. *See Urena*, 25 I&N Dec. at 142.