



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: R [REDACTED] -A [REDACTED], M [REDACTED] R [REDACTED] A [REDACTED] -496

Date of this notice: 4/25/2017

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

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Mullane, Hugh G.

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 496 – Florence, AZ

Date: APR 25 2017

In re: M [REDACTED] R [REDACTED] R [REDACTED]-A [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alex E. Navidad, Esquire

ON BEHALF OF DHS: Robert C. Bartlemay, Sr.
Senior Attorney

APPLICATION: Change in custody status

The Department of Homeland Security (“DHS”) has appealed an Immigration Judge’s October 31, 2016, custody order granting the respondent’s request for a change in custody status and ordering his release on a \$12,000 bond.¹ The rationale for this decision is set forth in a bond memorandum dated November 17, 2016. The respondent filed a reply brief. The DHS’s appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review 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).

The DHS argues that the Immigration Judge should have denied the respondent’s request for a change in custody status because he did not present materially changed circumstances since the prior bond order of August 8, 2016, when the Immigration Judge found that the respondent was a danger to the community. See 8 C.F.R. § 1003.19(e). Upon review, we are not persuaded that the Immigration Judge’s decision should be reversed.

The Immigration Judge has “broad discretion in deciding the factors that he or she may consider in custody redeterminations.” *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). The Immigration Judge considered all relevant factors in assessing whether the respondent presented sufficient evidence of materially changed circumstances since the prior bond order pertaining to the issue of dangerousness (I.J. at 3). These factors include the respondent’s voluntary and consistent attendance at meetings designed to assist him with rehabilitation for his single conviction for driving under the influence (“DUI”), and his remorse and willingness to abstain

¹ The respondent has not appealed the Immigration Judge’s finding that he poses a flight risk, nor does he challenge the bond amount of \$12,000. Therefore, these issues are waived. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).


from engaging in similar behavior again in the future (I.J. at 3; Bond Exhs. 10, 13 at Tab 1). The Immigration Judge also considered evidence that the respondent has the support of a sponsor who will help him with his continued rehabilitation process, and assurances from the respondent and his United States citizen wife that he would refrain from operating a vehicle and that she would be responsible for driving him should that become necessary (I.J. at 3; Bond Exh. 13 at Tab 2). Additionally, the Immigration Judge considered the respondent's agreement to comply with the Immigration Judge's conditions on the order that he not drive without a valid Arizona Driver's License and that he continue to participate in rehabilitation courses (I.J. at 3-4).

That the DHS would give more weight to the respondent's sole DUI conviction does not persuade us that the Immigration Judge's decision should be reversed. *See Matter of Guerra, supra* (stating that an Immigration Judge may choose to give greater weight to one factor over others, as long as the decision is reasonable). Similarly, we decline to second-guess the Immigration Judge's determination that the respondent exhibited genuine remorse (I.J. at 3; DHS's Brief at 11-12). *See Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) (an Immigration Judge's choice amongst two permissible views of the evidence is not clearly erroneous).

The DHS's argument on appeal that the respondent's participation in an anger management course was not relevant to whether he demonstrated a material change in circumstances as it pertains to the issue of dangerousness is not persuasive (DHS's Brief at 9). The respondent noted in his reply brief that drug and alcohol rehabilitative courses were not available at the facility where he was detained (Respondent's Reply Brief at 4). Moreover, an Immigration Judge may consider any evidence of rehabilitation. *See Matter of Guerra, supra; Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999).²

Based on the foregoing, we will affirm the Immigration Judge's determination that the respondent established a material change in circumstances since the prior bond hearing (I.J. at 3). Additionally, under these circumstances, we will not disturb the Immigration Judge's decision that a \$12,000 bond is sufficient to ensure the respondent's presence at future proceedings. Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD

² Additionally, the DHS argues on appeal that the Immigration Judge erred in considering the respondent's potential eligibility for relief based on his marriage to a United States citizen, as it is not relevant to the issue of whether the respondent poses a danger to the community (DHS's Brief at 8). However, the Immigration Judge did not consider this when assessing whether the respondent demonstrated materially changed circumstances with respect to the issue of dangerousness; rather, he considered the respondent's potential eligibility for relief when assessing whether the respondent was a flight risk (I.J. at 3-4).

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3260 NORTH PINAL PARKWAY
FLORENCE, ARIZONA 85132**

MATTER OF:

R [REDACTED] - A [REDACTED],
M [REDACTED] R [REDACTED]

RESPONDENT

BOND PROCEEDINGS

FILE NO.: A-[REDACTED] 496

DATE: November 17, 2016

EXHIBIT

Bx16

NOV 17 2016

**BRUCE A. TAYLOR
IMMIGRATION JUDGE**

FOR THE RESPONDENT:

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FOR THE DEPARTMENT:

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DECISION AND ORDER OF THE IMMIGRATION COURT

I. PROCEDURAL HISTORY

Respondent is a twenty-year-old, native and citizen of Mexico. (Ex. 1, Form I-862.) On May 30, 2016, the Department of Homeland Security ("DHS" or "the Department") issued a Notice to Appear ("NTA") charging Respondent with removability, alleging the following:

- (1) [Respondent is] not a citizen or national of the United States;
- (2) [Respondent is] a native of MEXICO and a citizen of MEXICO;
- (3) [Respondent] entered in the United States at or near unknown location, on or about unknown date;
- (4) [Respondent was] not then admitted or paroled after inspection by an immigration officer.

(*Id.*)

Based on these allegations, the Department charges Respondent with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "the Act"), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (*Id.*) On May 30, 2016, the Department took Respondent into custody after his encounter at the Lower Buckeye Jail in Maricopa County, Arizona. (Bond Ex. 2, Form I-213). On July 13, 2016, Respondent requested a custody redetermination hearing. (Bond Ex. 1, Mot. for Bond Hr'g.) On

August 8, 2016, the Court conducted a custody redetermination hearing and, at that time, denied Respondent bond, finding that he was a danger to the community. (Bond Hr'g (Aug. 8, 2016).) Then, on September 14, 2016, Respondent requested another custody redetermination hearing, arguing changed circumstances. (Bond Exh. 12, Mot. for Custody Redetermination.) The Court held another custody redetermination hearing on October 31, 2016. (Bond Hr'g (Oct. 31, 2016).)

II. LAW

An Immigration Judge ("IJ") "only ha[s] the authority to consider matters that are delegated to [him or her] by the Attorney General and the [Act]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009); accord 8 C.F.R. § 1003.10(b). The Act generally provides IJs with jurisdiction to review the Department's initial custody determination and to decide whether to "continue to detain the arrested alien [or] release the alien on bond" pending a removal decision. INA § 236(a). The Act provides IJs with the authority to conduct custody redetermination hearings for aliens detained pursuant to section 236(a) at any time before an administrative order becomes final. 8 C.F.R. § 1236.1(d) (cross-referencing 8 C.F.R. § 1003.19). If the alien is eligible for release on bond pursuant to section 236(a), the alien must establish that he or she is not a danger to persons or property, a threat to national security, or a flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006).

III. STANDARD

An Immigration Judge has "extremely broad discretion" in determining whether an alien merits release on bond pending a removal decision, as well as the amount of bond that is appropriate. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006) (quoting *Carlson v. Landon*, 342 U.S. 524, 540 (1952)). However, "dangerous aliens are properly detained without bond." See *Guerra*, 24 I&N Dec. at 38 (citing *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994)); see also *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999); *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009).

In making the bond determination with regards to danger to the community and risk of flight, the Immigration Judge may consider a number of factors, including:

- (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 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.

Matter of Guerra, 24 I&N Dec. at 38-39 (quoting *Matter of Saelee*, 22 I&N Dec. 1258 (BIA 2000); *Drysdale*, 20 I&N Dec. at 817; *Matter of Andrade*, 19 I&N Dec. 488 (BIA 1987)). In bond proceedings, the Court may rely "upon any information that is available [...] or that is presented to him or her by the alien or the service." 8 C.F.R. § 1003.19(d); see *Singh v. Holder*,

638 F.3d 1196, 1209 (9th Cir. 2011); *see also generally Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977) (bond proceedings are separate and apart from removal portion of the hearing).

IV. ANALYSIS

The Court finds that Respondent has now met his burden to show that he is not a danger to the community, but has not met his burden to demonstrate that he is not a flight risk. Nevertheless, the Court finds that a monetary bond in the amount of twelve thousand dollars (\$12,000) is reasonably calculated to ensure Respondent's appearance at future proceedings.

On November 22, 2015, Respondent was arrested for Driving Under the Influence ("DUI") in violation of Arizona Revised Statutes ("A.R.S.") § 28-1381(A)(1). (Bond Ex. 3 (Aug. 8, 2016).) The record establishes that Respondent drank Corona Light (beer) and was driving with a Blood Alcohol Concentration ("BAC") of .120%, around one and a half times the legal limit. (Bond Ex. 3 (Aug. 8, 2016); Bond Hr'g (Oct. 31, 2016).) This is Respondent's sole criminal offense. (Bond Ex. 2, Form I-213.) Respondent testified in these bond proceedings that he has been voluntarily and regularly attending meetings to cope with his alcohol problem and described with specificity what he has learned from this incident. (Bond Hr'g, (Oct. 31, 2016).) Moreover, Respondent expressed genuine remorse, both with his letter and in testimony, before the Court. (Bond Ex. 13, Tab 1; Bond Hr'g (Oct. 31, 2016).) Lastly, the Respondent testified that he will be attending regular meetings upon release and even has a sponsor secured. (Bond Exh. 1, Resp't Docs. at 69; Bond Hr'g (Oct. 31, 2016).) This evidence persuades the Court that; his criminal offense "helped [him] see the defects of [his] character and [his] shortcoming[s]." Respondent has made genuine rehabilitation efforts, and that Respondent will continue this rehabilitation upon release. *See generally Yepes-Prado v. INS*, 10 F.3d 1363, 1372 n.19 (9th Cir. 1993) (The Ninth Circuit has clarified that "obvious considerations" as to what constitutes evidence of rehabilitation are, "enrollment in and attendance at rehabilitation programs; statements of remorse; and letters of good character. The salience and weight of these and other factors may vary from case-to-case...").

Further, in his hearing, Respondent also ensured, to the satisfaction of this Court, that he would refrain from operating or being in physical control of a vehicle. (Bond Hr'g (Oct. 31, 2016).) The Court notes that drinking and driving is an inherently dangerous activity that puts the community as a whole at risk. Based on Respondent's assurances, including an affidavit from his wife indicating she will be responsible for driving Respondent, the Court found that removing Respondent from behind the wheel of a vehicle alleviated the danger to the community. (Bond Hr'g (Oct. 31, 2016); Bond Exh. 13, Resp't Docs. at Tab 2.) Also, the Court notes the additional conditions being placed on Respondent to comply with this Court's order. In light of the sum of evidence presented, the Court finds that Respondent has shown that he does not present a danger to the community, because he will not drive without a valid license.

Nevertheless, the Court finds that Respondent constitutes a flight risk. Respondent has allegedly been in the United States over fifteen years, and entered without inspection or permission. (Exh. 1, Form I-213.) Despite his length of time in the United States, Respondent presents limited evidence of assets or of a fixed address or property in the United States. (Bond Exh. 1, Resp't Docs.) However, Respondent is now married to a United States citizen. (Bond Ex. 12, Mot. for Custody Redetermination at Tab A; Bond Hr'g (Oct. 31, 2016).) As a result, Respondent now appears facially eligible for relief pursuant to INA § 240A(b). (*See generally*

Ex. 1, Form I-862.) The Court finds that Respondent's manner of entry and lack of strong communal ties makes him a flight risk. Nevertheless, given Respondent's family ties in the United States, length of time in the community, and apparent eligibility for relief from removal, the Court finds that a bond in the amount of \$12,000 is reasonably calculated to assure Respondent's appearance at future proceedings.

V. CONCLUSION

Accordingly, the Court will enter the following order:

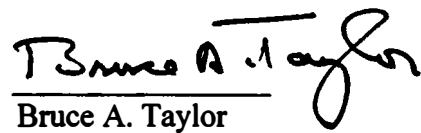
ORDER: IT IS HEREBY ORDERED that Respondent's custody redetermination be **GRANTED** and he be **RELEASED FROM CUSTODY** of the Department of Homeland Security upon the posting of a bond in the amount of **\$12,000**.

IT IS FURTHER ORDERED that Respondent **SHALL NOT DRIVE** without a valid Arizona Drivers' License.

IT IS ALSO FURTHER ORDERED that Respondent **SHALL CONTINUE** taking rehabilitation courses.

NOV 17 2016

Date


Bruce A. Taylor
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY: MAIL ☒ PERSONAL SERVICE ()
TO: ☒ ALIEN () ALIEN c/o Custodial Officer ☒ ALIEN'S ATTY ☒ DHS
DATE: Nov. 17, 2016 BY COURT STAFF: 