



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: M [REDACTED] - N [REDACTED], C [REDACTED] ... A [REDACTED] -716

Date of this notice: 8/14/2018

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Mann, Ana
Snow, Thomas G
Adkins-Blanch, Charles K.

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-716 – Pompano Beach, FL

Date: AUG 14 2018

In re: C [REDACTED] E [REDACTED] M [REDACTED] -N [REDACTED]

IN BOND PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Pierce E. Rivera, Esquire

ON BEHALF OF DHS: Shaheewa T. Jarrett Gelin
Assistant Chief Counsel

APPLICATION: Change in custody status; remand

The respondent, a native and citizen of Venezuela, appeals the Immigration Judge's May 22, 2018, order denying his request for a change in custody status. The respondent filed a brief in support of his appeal. He has also submitted additional evidence, which we have construed as a motion to remand. In response, the Department of Homeland Security (DHS) has moved for summary affirmance. The appeal will be sustained, the motion will be granted, and the record will be remanded to the Immigration Judge for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2012). An alien in a custody determination under this section bears the burden to show to the satisfaction of the Immigration Judge that he or she merits release on bond by establishing 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 Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999); *see also* 8 C.F.R. § 1236.1(c)(8); *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003).

In his June 1, 2018, bond memorandum, the Immigration Judge noted that the respondent was arrested for Driving Without a License and speeding for going 97 MPH in a 70 MPH zone on the Interstate in Florida. The Immigration Judge also noted that this conduct took place at 11:00 a.m., "when the roads are heavily traveled," and with no excuse for it. Based on these circumstances, he found the respondent to be a danger to the community. The Immigration Judge further noted that while the respondent stated that he is engaged to be married, "there is no showing . . . that [he] has a bona fide relationship with anyone," that the letters from friends appeared to be similar and were not notarized or made under oath, and that, accordingly, the respondent was "a poor bail risk." He also noted that the respondent's fiancée's financial circumstances indicate that the respondent could become a public charge (IJ at 1).

On appeal, the respondent argues that he is not likely to become a public charge, does not represent a danger to the community, and is not a flight risk. He asserts that he has no criminal record and that his single arrest for Driving Without a License, during which he also received a citation for speeding, is insufficient to warrant a finding of dangerousness. In support of this argument, the respondent points out that the 11:00 a.m. speeding incident took place in a rural area of Florida's Turnpike¹ and that there is no evidence in the record that he was driving carelessly at the time. He also argues that upon his release he will have a stable address, that he has family ties in the United States, and that once he marries, he will become prima facie eligible for relief upon the approval of a visa petition. The respondent has submitted with his appeal evidence of his June 2018 marriage license. He asserts that all these factors indicate that he has a great incentive to appear for further hearings and that a \$5,000 bond is reasonable (Respondent's Br.).

We acknowledge the Immigration Judge's concerns. However, on the record before us, we conclude that the respondent has met his burden to establish that he does not pose a danger to the community. The record shows no convictions or any arrests other than the above-referenced arrest. In light of the foregoing, we will remand the record to the Immigration Judge to assess the respondent's risk of flight and to determine the appropriate amount of bond. Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, the motion to remand is granted, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.



FOR THE BOARD

¹ The citations also indicate that the incident did not take place on a weekend, when more vehicles could reasonably be expected to be on the road at that time of the day, but on a Friday. See Bond Exh. 4.