



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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El Centro, CA 92243**

Name: S [REDACTED], S [REDACTED]

A [REDACTED]-779

Date of this notice: 10/18/2018

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.
Geller, Joan B

Smith'Ci
User team: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-779 – Imperial, CA

Date: **OCT 18 2018**

In re: S [REDACTED] S [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew K. Borowski, Esquire

ON BEHALF OF DHS: Daniel F. Casillas
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of India, appeals from the Immigration Judge's June 28, 2018, bond order, which set bond in the amount of \$20,000 and imposed additional conditions, including the presentation of his passport to the Department of Homeland Security. The appeal will be sustained in part and dismissed in part.

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). An alien in a custody determination under this section must establish 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). The Immigration Judge has the authority to place conditions on an alien's release from custody when setting a monetary bond. *Matter of Garcia-Garcia*, 25 J&N Dec. 93, 97 (BIA 2009).

The respondent concedes that the \$20,000 bond amount set by the Immigration Judge was reasonable (Resp. Br. at 2). However, the respondent contests the additional condition that he present his original passport to the DHS prior to release. The respondent claims that his passport was taken from him during his journey through Mexico (Resp. Br. At 4). The respondent also asserts that he cannot obtain a replacement passport from Indian authorities because he fears persecution by that government (Resp. Br. At 7). At his custody hearing, the respondent presented two identification cards from India as well as his birth certificate (IJ at 2). Neither the transcript of the credible fear interview nor the Form 1-213, Record of Deportable/Inadmissible Alien indicate that the respondent has a passport. Although the Immigration Judge expressed concern regarding the credibility of the respondent's testimony regarding his travel from India to the United States, the Immigration Judge did not specifically question the veracity of the respondent's identity

or his identity documents. Nor is it clear to us from the Immigration Judge's decision how the presentation of the respondent's passport to the DHS would further ensure the respondent's presence at future proceedings. Under these circumstances, we conclude that the \$20,000 bond amount set by the Immigration Judge is reasonable to ensure the respondent's presence at future proceedings, and that the further condition that the respondent present an original passport in order to secure his release is not warranted. The following orders will be entered.

ORDER: The appeal is dismissed with respect to the Immigration Judge's order that the respondent be released upon payment of a \$20,000 bond.

FURTHER ORDER: The appeal is sustained with respect to the Immigration Judge's order that the respondent present an original passport as a condition of his release, and that portion of the Immigration Judge's decision is vacated.



FOR THE BOARD