



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: D [REDACTED] -A [REDACTED], F [REDACTED] F [REDACTED]**

**A [REDACTED] -959**

**Date of this notice: 1/10/2018**

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:  
Liebowitz, Ellen C

Approved: \_\_\_\_\_  
User team: Docket

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Falls Church, Virginia 22041

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File: [REDACTED] 959 – Aurora, CO

Date: JAN 10 2018

In re: F [REDACTED] F [REDACTED] D [REDACTED] -A [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael Joseph McCarroll, Esquire

ON BEHALF OF DHS: Kirsten Sinclair  
Assistant Chief Counsel

APPLICATION: Bond redetermination

The Department of Homeland Security (DHS) has appealed from an Immigration Judge's custody determination of June 8, 2017. On July 7, 2017, the Immigration Judge issued a bond memorandum setting forth the reasons for the decision releasing the respondent, a native and citizen of Mexico, on \$8,000 bond. 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).

There is no dispute that the instant proceeding is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). The Immigration Judge found the respondent was not a danger to the community and set bond at \$8,000 (IJ Bond Mem. at 1-3).

We will uphold the Immigration Judge's decision as he appropriately considered the evidence relevant to the respondent's dangerousness. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Contrary to the DHS's claim, the Immigration Judge considered the overall seriousness of the crime (IJ Bond Mem. at 2-3). The respondent was convicted of third degree assault for engaging in sexual acts with a minor who was 14 years old while the respondent was 23 years old. The underlying events occurred in 2012 to 2013 (IJ Bond Mem. at 2). The DHS correctly points out the seriousness of this crime and the fact that the respondent is required to register as a sex offender. The Immigration Judge, however, did consider the nature of the crime, but also noted several mitigating factors that indicated the respondent was not a danger to the community. For example, he noted the respondent has no other criminal record and was never incarcerated for this crime, either during the proceeding or as a result of her conviction (IJ Bond Mem. at 2-3). While the DHS argues that the standards are different for bail for criminals in Colorado (DHS's Br. at 19), we discern no basis to disturb the Immigration Judge's considerations in this area.

The DHS also notes that, although the respondent claims she was unaware of the age of the minor, this is no defense and is not an element of the crime (DHS's Br. at 19). The Immigration

Judge, however, did not discount the respondent's credibility in this regard. Further, a psychological report prepared during the criminal proceeding notes that "testing did not indicate any deviant sexual interest" for the respondent and that she "presents with few risk factors that would increase her potential for re-offense" (Presentence Report, pg. 3). *See Matter of Guerra*, 24 I&N Dec. at 37. On appeal, inter alia, the DHS emphasizes that the Presentence Report indicates the respondent has "moderate denial" (DHS's Br. at 20-22). However, we discern no basis to disturb the Immigration Judge's carefully reasoned decision that the respondent has met her burden of proving that her release would not pose a danger to property or persons in the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *see also Matter of Fatahi*, 26 I&N Dec. 791, 795 (BIA 2016) (such determination is broader than "determining if the record contains proof of specific acts of past violence"). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

  
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FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
AURORA IMMIGRATION COURT**

**In The Matter Of:**

**F [REDACTED] F [REDACTED] D [REDACTED]-A [REDACTED],  
Respondent.**

)  
) **File No. : A [REDACTED] 959**  
)  
) **In Custody Proceedings**  
)  
) **Date: July 7, 2017**  
)

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**Issue:** Respondent's Motion for Custody Redetermination

**On Behalf of Respondent:**

Michael J. McCarroll, Esq.  
3773 Cherry Creek N. Drive  
Suite 975  
Denver, Colorado 80209

**On Behalf of Department:**

Kirsten Sinclair, Asst. Chief Counsel  
U.S. Department of Homeland Security  
12445 East Caley Avenue  
Centennial, CO 80111

**Memorandum of Bond Decision and Order of Immigration Judge**

On May 24, 2017, the Department of Homeland Security (the Department or DHS) served a Warrant for Arrest of Alien on Respondent [REDACTED] and took Respondent into custody. On May 26, 2017, the Department initiated the present removal proceedings against Respondent by filing a Notice to Appear (NTA) with the Court. In the NTA, the Department charged Respondent as removable under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act) as an alien present in the United States without admission or parole.

On June 8, 2017, the Court held a custody redetermination hearing at Respondent's request. Respondent was represented by counsel who submitted 69 pages of documents tabbed A-S in support of Respondent's request. The Department submitted 52 pages of documents including Form I-213, Record of Deportable/Inadmissible Alien, and court records of Respondent's criminal background in support of its request to deny Respondent's motion for custody redetermination. A seven-page presentence report for Respondent's third degree assault offense also was submitted. At the conclusion of the hearing, after considering all of the evidence presented, including the testimony of Respondent and Respondent's wife, and argument from counsel for both parties, the Court granted Respondent's release from custody conditioned upon payment of a bond in the amount of \$8,000.00 and conditioned on compliance

with all terms of Respondent's probation. The Department reserved its right, and the Respondent waived her right to appeal.

At the hearing, the Department acknowledged that Respondent is not subject to mandatory detention, and the Court agreed. The Court therefore proceeded to consider the factors set forth in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). Those factors include any or all of the following: (1) whether Respondent has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States and whether they may entitle Respondent to reside permanently in the United States in the future; (4) employment history; (5) record of appearances in court; (6) criminal record including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) the manner of entry into the United States.

Respondent has resided continuously in the United States since 1995 or approximately 22 years – most of her life as she was born on February 5, 1989. She was brought to the United States as a 6-year-old child, and her mother abandoned her at the age of 14. Respondent is now married to a naturalized United States citizen, lived with her at a fixed address in Aurora, Colorado prior to being detained, and would return to that address if released from custody. Respondent had a three-year relationship with her current spouse prior to being married in November 2016.

Respondent's father was a legal permanent resident prior to his death and had filed an I-130 before April 30, 2001 on behalf of Respondent. Respondent now has an approved I-130 through her spouse. Respondent also is potentially eligible for nonpermanent resident cancellation of removal.

Respondent has maintained stable employment while in the United States including work at the Denver Aquarium and her current job as loader in the warehouse at New Age Beverage. The manager of the aquarium wrote a very supportive letter on her behalf, and her boss and other co-workers at her current job wrote letters describing her strong work ethic and how indispensable she was to the business. Several other family members and friends also wrote letters of support.

Respondent's criminal history includes a May 3, 2017 third degree assault conviction arising out of a sexual relationship with a 14-year-old minor in 2012-2013. Respondent was 23 years' old at the time. Respondent was sentenced to two years' probation and was required to register as a sex offender. She reports regularly to her probation officer every week and is required to call the officer every evening. She is also required to attend classes and had just begun those classes when she was detained by the Department.

Respondent testified at the hearing. Respondent and the victim worked together at the same job. The victim lived in an apartment with her sister rather than with her mother. Respondent claimed that the victim stated she was 18 years' old, and given her appearance, employment, and living with her sister, all outward appearances suggested that the victim indeed was 18 years' old. Respondent was 23 years' old at the time and stopped seeing the victim when


the victim's mother told her the victim was underage. Respondent did not learn the true age of the victim until she was criminally charged. Respondent testified and the victim stated to the authorities that the relationship was a consensual one. According to Respondent's wife, who also testified at the hearing, the victim and the victim's mother did not want to have anything to do with the case, and the case was not pursued to a conviction until almost four years later.

The presentencing report confirmed that the victim did not submit a Victim Impact Statement, and the victim and her mother failed to respond to the probation department's follow-up contacts for sentencing purposes. The presentencing report also shows that during the lengthy criminal process, Respondent was never incarcerated. The presentencing report also contains information regarding an Offense Specific Evaluation performed by expert Dr. Pam Hiner. Testing did not indicate any deviant sexual interest and demonstrated few risk factors that would increase Respondent's potential for re-offense. Dr. Hiner also noted that Respondent was amenable to treatment and had several strengths to assist her with community supervision. Respondent expressed great remorse at her hearing in this matter which was consistent with her statement included in the presentencing report: "I'm a good kind hearted working person who made a mistake of not verifying an ex partners age. I feel horrible about the insident (sic). And if I could go back I would be more responsible before involving myself with anyone. I may self (sic) have experience (sic) mental, physical, & sexual abuse & I would never wish upon anyone or commit it myself willingly or knowingly." Respondent was referring to abuse she suffered as a child from her mother's boyfriend. The presentencing report, relying in part on the expert's evaluation and opinion, found that Respondent did not meet the criteria for a sexually violent predator and recommended no prison sentence despite the nature of the crime that qualified for six to twenty-four months in prison. The District Attorney and the Court who were far more familiar with the true circumstances of Respondent's crime only recommended and sentenced Respondent, respectively, to two years of probation.

This Court was greatly concerned with Respondent's criminal conviction. However, under all the circumstances, the Court exercised its discretion to find that Respondent is not a flight risk or danger to the community. Considering the totality of the circumstances, the Court attached great weight to Respondent's fixed address, length of residence in the United States, strong family ties and support, particularly her recent marriage and supportive testimony from her spouse, numerous letters of support from individuals who know about her criminal conviction, stable employment history, potential eligibility for relief from removal, unequivocal and genuine acceptance of responsibility and remorse for her criminal behavior, presentencing report in the criminal case including the opinion of an independent expert, no incarceration both during the criminal process and in the final sentence, probation conditions which require taking classes and daily check-ins with her probation officer, and the criminal court's view of the case. The Court also notes that Respondent has met her responsibilities to appear in court, has not attempted to flee prosecution, and has not attempted to escape authorities. In recognition of Respondent's recent assault conviction with certain terms of her sentence outstanding, the Court imposed a bond amount of \$8,000.00 and further conditioned Respondent's release from custody

on complying with all terms of her probation which should insure Respondent's continued participation in her removal proceedings.

Date: July 7, 2017

  
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Steven Caley  
Immigration Judge