



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: G [REDACTED]-T [REDACTED], A [REDACTED]

A [REDACTED]-483

Date of this notice: 5/19/2020

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:
Greer, Anne J.
Swanwick, Daniel L.
Wilson, Earle B.

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-483 – Tucson, AZ

Date: MAY 19 2020

In re: A [REDACTED] G [REDACTED]-T [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mary M. Cowan, Esquire

ON BEHALF OF DHS: Cedric I. Hay
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent, a native and citizen of Colombia, has appealed the Immigration Judge's August 26, 2019, bond order. The record will be remanded.

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).

In the present matter, the respondent's custody proceedings are 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); *see also* 8 C.F.R. § 1236.1(c)(8); *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003).

The Immigration Judge, in his September 13, 2019, bond memorandum, stated that the respondent was a flight risk because he had not stated a fear of returning to Colombia, because his sponsors did not prove that they were not, themselves, in unlawful status,¹ and due to the fact that the respondent did not present himself at a port of entry. The Immigration Judge did not find the respondent to be a danger and this finding is not at issue on appeal. On appeal, the respondent argues, inter alia, that he does not present an extreme flight risk that cannot be mitigated by the imposition of reasonable bond and/or alternatives to detention.

In the instant case, while we acknowledge the Immigration Judge's reasoning² and agree that

¹ The Immigration Judge based this finding on the fact that the respondent's sponsor (his aunt), his uncle, and another relative did not present U.S. Passports or Lawful Permanent Resident Cards, despite claiming to be citizens or lawful residents of the United States. *See* Bond Memo. at 3-4.

² The respondent has since submitted an application for asylum and withholding of removal.

the respondent presents some risk of flight, we will remand the record for the Immigration Judge to consider whether the imposition of reasonable bond or alternatives to detention would ensure the respondent's appearance at future hearings or for removal. In this regard, we apply our recent precedent *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020), in which we affirmed an Immigration Judge's decision denying discretionary bond to a recent arrival and asylum applicant who evaded inspection, stated no past or present claim to legal status in this country, and who had no close ties to the United States. We view the present case as distinguishable, where the respondent has presented evidence and argues that family members in legal status are willing and able to sponsor and support him.³

Under these circumstances, we will remand the record for the Immigration Judge to reconsider whether the respondent is eligible for release from detention on the condition of reasonable bond or if his risk of flight from future proceedings is otherwise mitigated by the imposition of alternatives to detention. *Cf. Hernandez v. Sessions*, 872 F.3d 976, 993-94 (9th Cir. 2017). On remand, both parties may submit additional evidence.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

³ On appeal, the respondent persuasively argues that the New York State identification documents that his relatives presented to the Immigration Judge could not have been obtained without evidence of their legal residence in the United States. *See* Respondent's Br. at 3-4. While we make no factual findings regarding the evidence underlying this contention, we note that his relatives' lawful status in this country would be a positive factor weighing in favor of the respondent's application for release on bond.

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Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED]-483 – Tucson, AZ

Date: MAY 19 2020

In re: A [REDACTED] G [REDACTED]-T [REDACTED]

DISSENTING OPINION: Earle B. Wilson, Board Member

I respectfully dissent. We recently issued a precedent decision in *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020), in which we affirmed an Immigration Judge's decision denying discretionary bond to a recent arrival and asylum applicant who evaded inspection, stated no past or present claim to legal status in this country, and who had no close ties to the United States. The majority fails to discuss, much less distinguish *Matter of R-A-V-P-*, which I would find controls the outcome of this case. I do not view the instant case as distinguishable, where the respondent did not immediately state a fear of returning to Colombia and where the Immigration Judge did not clearly err in finding that he did not present persuasive evidence of his relatives' and sponsor's legal status in the United States.

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