



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Henton, Eric Anthony
EH Law Group, PLLC
5100 Poplar Ave.
STE 3112
Memphis, TN 38137**

**DHS - ICE Office of Chief Counsel -
OAKDALE 2
1010 E. Whatley Rd.
OAKDALE, LA 71463**

Name: V [REDACTED]-H [REDACTED], L [REDACTED] ... A [REDACTED]-504

Date of this notice: 12/21/2018

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:
Kelly, Edward F.
Geller, Joan B
Snow, Thomas G

Userteam: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

Falls Church, Virginia 22041

File: A [REDACTED]-504 – Oakdale, LA

Date: DEC 21 2018

In re: L [REDACTED] V [REDACTED]-H [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eric A. Henton, Esquire

ON BEHALF OF DHS: John Zachary
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Honduras, appeals from the decision of the Immigration Judge, dated July 18, 2018, denying the respondent's request for a redetermination of his custody status. The appeal will be sustained and the record will be remanded.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii).

The Immigration Judge concluded that she lacked jurisdiction to consider the respondent's request for a redetermination of his custody status because the respondent was an arriving alien (IJ at 2). See 8 C.F.R. § 1003.19(h)(2)(i)(B). An arriving alien is defined, in relevant part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. We note that the Department of Homeland Security charged the respondent in the Notice to Appear not as an arriving alien, but as an alien present in the United States who has not been admitted or paroled (Exh. 1). Moreover, the NTA alleges that the respondent entered the United States "at an unknown location on or about an unknown date" (Exh. 1). Finally, although the respondent may have testified that he "turned himself in to officials at the border," we are not satisfied that this testimony establishes that the respondent is an arriving alien inasmuch as it is not clear that the respondent presented himself at a port-of-entry. We conclude that the evidence of record does not establish that the respondent is an arriving alien, as defined in 8 C.F.R. § 1.2. We therefore reverse the decision of the Immigration Judge that the respondent is an arriving alien and we will remand the record for further consideration of the respondent's request for redetermination of his custody status. The following order will be entered.

ORDER: The appeal is sustained, the Immigration Judge's July 18, 2018, order is vacated, and the record is remanded for further proceedings consistent with the foregoing decision.



FOR THE BOARD