



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: A [REDACTED], J [REDACTED]

A [REDACTED]-070

Date of this notice: 2/13/2019

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:
Wendtland, Linda S.
Greer, Anne J.
O'Connor, Blair

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-070 – Elizabeth, NJ

Date: FEB 13 2019

In re: J [REDACTED] A [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ramy Aqel, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Brazil, appeals from the Immigration Judge's June 28, 2018, bond order denying his request for a change in custody status. The Department of Homeland Security has not responded to the appeal. The reasons for the Immigration Judge's custody order are set forth in a bond memorandum, dated July 23, 2018. The respondent's appeal will be sustained and the record will be remanded.

An Immigration Judge has wide latitude in deciding the factors to be considered in determining whether an appropriate bond may be set to ensure an alien's presence at future removal proceedings. *Matter of Guerra*, 24 I&N Dec. 37, 39-40 (BIA 2006). The respondent bears the burden of demonstrating that he merits release from custody. *Id.* at 40. To satisfy that burden, he must demonstrate, inter alia, that his release would not pose a danger to persons or property. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *Matter of Adeniji*, 22 I&N Dec. 1102, 1111-13 (BIA 1999) (relying in part on 8 C.F.R. § 1236.1(c)(8)). An Immigration Judge has broad discretion to consider any matter he or she deems relevant when determining whether a lawfully detained person's release on bond is permissible or advisable; thus, a custody redetermination that has a "reasonable foundation" will not be disturbed on appeal. *Matter of Guerra*, 24 I&N Dec. at 39-40 (relying in part on *Carlson v. Landon*, 342 U.S. 524, 534 (1952)).

The Immigration Judge denied the respondent's request for a change in custody because she determined that he poses a danger to the community and a flight risk (Bond Memo at 1-2). The Immigration Judge based her determination on the respondent's criminal record, which includes prior arrests for stalking and harassment, as well as convictions for obstruction in 2009, and simple assault and possession of a weapon in 2016, for which he received pre-trial intervention (Bond Memo at 1).¹

On appeal, the respondent asserts that he was denied his rights to due process and a fair bond hearing because his bond hearing "was very rushed" and the Immigration Judge did not consider evidence of his family and community ties in the United States (Respondent's

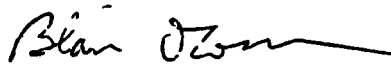
¹ We note that the record reflects that most of the respondent's criminal charges were dismissed, as the respondent argues on appeal (*see* Bond Exh. 3 at 664-704; *see* Respondent's Br. at ¶ 18).

Br. at ¶¶ 15-16).² The respondent also claims that, although his counsel offered several times at his bond hearing to have his current United States citizen partner and children's mother testify regarding the circumstances surrounding his arrests, the Immigration Judge impermissibly precluded her testimony (*see* Respondent's Br. at ¶¶ 15, 19-20).³

In light of the foregoing, we conclude that a remand is warranted for the Immigration Judge to conduct a full bond hearing, including consideration of the respondent's testimonial and documentary evidence. Thus, we will remand the record to the Immigration Judge for reconsideration and for the entry of supplemental findings sufficient to establish whether the respondent poses a danger to the community or a flight risk and, if appropriate, to determine what amount of bond would suffice to ensure his appearance at future hearings.⁴ *See* 8 C.F.R. § 1003.1(d)(3)(iv) (providing that the Board may not engage in fact-finding in the course of deciding appeals). On remand, the parties should have the opportunity to supplement the record with additional evidence and testimony. We express no opinion regarding the ultimate outcome of the respondent's case.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with this decision and for the entry of a new decision.



FOR THE BOARD

² The respondent further argues that, although he timely submitted a 750-page bond motion with supporting exhibits, his motion was electronically scanned to the Immigration Judge (who appeared by video teleconference) just minutes before his bond hearing (Respondent's Br. at ¶ 15); thus, it is unclear if the Immigration Judge had sufficient time to properly consider the respondent's documentary evidence.

³ In this regard, the respondent correctly notes that, although the Immigration Judge's bond memo references "the testimony" taken regarding the victim of his arrests (Bond Memo at 1; Respondent's Br. at ¶ 19), no testimonial evidence was permitted at the respondent's hearing, despite numerous requests by the respondent to present such evidence.

⁴ In light of our decision, we find it unnecessary to address any of the remaining issues raised by the respondent on appeal. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976)).