



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

**Vidal, Ricardo
Law Offices of Ricardo Vidal, P.A.
600 West Broadway
Suite 700
San Diego, CA 92101**

**DHS/ICE Office of Chief Counsel - OTM
880 Front St, Room 2246
San Diego, CA 92101**

Name: C [REDACTED] H [REDACTED], J [REDACTED] ... A [REDACTED] 540

Date of this notice: 1/5/2018

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:
Adkins-Blanch, Charles K.
Greer, Anne J.
Mullane, Hugh G.

Userteam: Docket

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Falls Church, Virginia 22041

File: A2 [REDACTED] 540 – San Diego, CA

Date: JAN - 5 2018

In re: J [REDACTED] L [REDACTED] C [REDACTED]
[REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ricardo Vidal, Esquire

APPLICATION: Custody redetermination

The respondent has appealed from the Immigration Judge's July 7, 2017, order denying his request for a change in custody status. The basis for the Immigration Judge's order is set forth in a bond memorandum dated August 10, 2017. The Department of Homeland Security ("DHS") has not responded to the appeal. The appeal will be sustained and the record will be remanded.

We review findings of fact by the Immigration Judge for clear error, while all other issues, including whether the parties have met the relevant burden of proof, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i)-(ii) (2017).

An alien in a custody determination hearing conducted pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2012), has the burden of establishing that he does not present a threat to persons or property, is not a threat to national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999); 8 C.F.R. § 1236.1(d). An alien who does not meet this burden is properly held without bond. *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009). An Immigration Judge has broad discretion in considering factors in making a bond determination. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

We do not agree with the Immigration Judge's determination that the respondent is a danger to the community based solely on the respondent's recent conviction for driving under the influence ("DUI") (IJ at 2). While we recognize the seriousness of the offense, this was the respondent's first contact with law enforcement after 27 years in the United States (IJ at 2; Respondent's Br. at 3). Under the facts in this case, we agree with the respondent that this one infraction is an insufficient basis upon which to find the respondent poses a danger (Respondent's Br. at 3-4). Consequently, we reverse the Immigration Judge's danger to the community determination.

Additionally, the Immigration Judge stated that he would have found the respondent to not be a flight risk (IJ at 2). Therefore, we will remand the record for the Immigration Judge to set a reasonable bond to ensure the respondent's appearance at future proceedings. *See Matter of Andrade*, 19 I&N Dec. 488, 489-91 (BIA 1987); *see also Matter of Urena*, 25 I&N Dec. at 140.

Accordingly, the following order will be entered.

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



FOR THE BOARD

Board Member Hugh G. Mullane dissents without opinion.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
7488 Calzada de la Fuente
San Diego, California 92154**

File No.: [REDACTED] 540

) Date: 8/10/2017
)
)

In the Matter of

)
) **IN BOND PROCEEDINGS**
)
)

J [REDACTED] L [REDACTED] C [REDACTED] H [REDACTED],

Respondent

**ON BEHALF OF
RESPONDENT:**

Ricardo Vidal, Esquire
600 West Broadway, Suite 700
San Diego, California 92101

**ON BEHALF OF THE DEPARTMENT OF
HOMELAND SECURITY:**

Assistant Chief Counsel
880 Front Street, Suite 2246
San Diego, California 92101

BOND MEMORANDUM OF THE IMMIGRATION JUDGE

I. Procedural History

[REDACTED] ("Respondent") is a native and citizen of Mexico. On July 7, 2017, the Court conducted a custody redetermination hearing pursuant to section 236 of the Immigration and Nationality Act ("INA"). 8 C.F.R. § 1236.1(d). In support of his request for bond, Respondent submitted a bond packet, containing birth certificates for Respondent and his two United States-citizen sons, medical documents for one of his sons, and documents concerning his sponsor. *See* Bond Exh. 1. The Department of Homeland Security ("Department") did not submit any documents into evidence. After considering all the evidence presented, the Court found that Respondent was a danger to the community and denied his request for bond. On August 4, 2017, Respondent appealed the Court's custody redetermination decision to the Board of Immigration Appeals ("Board"). Accordingly, the Court provides the present Memorandum to facilitate review of Respondent's appeal. *See* Immigr. Ct. Prac. Man., Chap. 9.3(e)(vii) (June 27, 2017).

II. Law and Analysis

The Court is authorized to detain, release, or set bond for the alien pursuant to section 236 of the INA. 8 C.F.R. § 1236.1(d). An alien may request a bond redetermination hearing before the Court at any time before the issuance of an administratively final order of removal. *Id.* Section 236(a) of the INA governs the detention of those aliens who are not subject to any mandatory detention provisions. An alien requesting release on bond bears the burden of

proving by clear and convincing evidence that he does not pose a danger to the community and is not a flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006); 8 C.F.R. § 1236.1(c)(3).

An Immigration Judge may look to a number of factors in determining whether a respondent merits release from custody, as well as the amount of bond that is appropriate. *Guerra*, 24 I&N Dec. at 40 (BIA 2006). These factors may include any or all of the following:

(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

Id. at 40; *see also Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (noting that a court should consider the extensiveness, recency, and seriousness of criminal activity when determining dangerousness). The Board made clear that the Court "has extremely broad discretion in deciding whether or not to release an alien on bond." *Guerra*, 24 I&N Dec. at 39. Any evidence in the record that is probative and specific can be considered. *Id.* at 40–41. Additionally, the Court "may choose to give great weight to one factor over others, as long as the decision is reasonable." *Id.* at 40. "An Immigration Judge should only set a bond if [s]he first determines that the alien does not present a danger to the community." *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

In the present matter, the Court found that Respondent failed to meet his burden to establish that he is not a danger to the community. In assessing Respondent's danger, the Court considered his conviction for driving under the influence ("DUI"). Respondent was arrested for DUI on June 9, 2017. Before the arrest, Respondent took a breathalyzer test at the request of police officers. The Respondent does not remember the result of the breathalyzer test, but it appears his blood alcohol content may have been near double the legal limit. Due to the recency of his DUI conviction and the seriousness of such a conviction, the Court found that Respondent poses a danger to the community.

The Court acknowledged the positive factors in Respondent's case. Respondent is married with two United States-citizen sons, one of which suffers from a liver condition requiring frequent doctor visits. He was working full-time in maintenance before his arrest and subsequent detention. Respondent has been in the United States continuously since 1994 and has only one criminal conviction in that time. However, the redeeming quality of Respondent's lengthy stay in the United States is lessened as he reentered the United States in 1994 following a grant of voluntary departure. While the Court would have found Respondent not to be a flight risk, these positive equities did not overcome the recency and seriousness of his DUI conviction. Therefore, the Court concluded that Respondent's continued detention is justified because he is a danger to the community. *See Urena*, 25 I&N Dec. at 141.

Accordingly, the Court entered the following order:

ORDER

IT IS HEREBY ORDERED that Respondent's request for custody redetermination be **DENIED**.


OLGA ATTIA
U.S. Immigration Judge

cc: Mr. Vidal for Respondent.
Assistant Chief Counsel for DHS.